Supreme Court, U. S.
FILED
AUG 22 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

_____ Term, 1977

No. 77-304

Paul Richter, dba The Body Shop,

Petitioners,

vs.

Baxter Rice, Director of The Department of Alcoholic Beverage Control of the State of California, The Department of Alcoholic Beverage Control of the State of California, and The Alcoholic Beverage Control Appeals Board of the State of California,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD OF THE STATE OF CALIFORNIA

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PETITION FOR WRIT OF CERTIORARI TO THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD OF THE STATE OF CALIFORNIA

_____

Petitioner Paul Richter prays that a Writ of Certiorari issue to review the judgment and opinion of the Alcoholic Beverage Control Appeals Board, entered April 29, 1977, affirming the decision of the Department of Alcoholic Beverage Control of the State of California to revoke Petitioner's general on-sale license to sell alcoholic beverages.

OPINION BELOW

The opinion of the Alcoholic Beverage Control Appeals Board is unreported and appears in Appendix "A" hereto. The orders of the Court of Appeal of the State of California, Fourth Appellate District, and of the California Supreme Court denying writs of review of said opinion were entered on May 26, 1977 and June 23, 1977, respectively, and appear herein as Appendices "B" and "C" respectively.

APPENDIX TO THIS PETITION

Because of the volume of Appendix "D", consisting of the expert testimony of Ms. Virginia Francis Chase, which testimony was incorporated into and part of the administrative record below (See Appendix "A", at Page 6 thereof), the Appendix has been presented

separately from this Petition, pursuant to Supreme Court Rule 23(i).

PROCEEDINGS BELOW

On or about March 18, 1976, an accusation was filed by Respondent, Department of Alcoholic Beverage Control (hereinafter "Department") alleging that grounds for discipline against Petitioner's license existed under Article XX, §22 of the California Constitution and under §24200 of the California Business and Professions Code in that Petitioner allegedly permitted violations of the Department's Rule 143.3.

A hearing was duly held in said matter and a proposed decision was duly rendered and thereafter adopted by the Respondent Department in said matter in which your Petitioner's license was revoked as aforesaid. Said matter was then duly appealed to Respondent Alcoholic Beverage Control Appeals Board (hereinafter "Board") which thereafter rendered its decision as aforesaid which was filed on or about

April 29, 1977. Appendix "A".

Petitioner duly petitioned the Court of Appeal of the State of California, Fourth Appellate District for a Writ of Review and Stay Order, as prayed for herein. Said Court summarily denied said petition on May 26, 1977 without any hearing. Appendix "B". Thereafter, Petitioner duly petitioned the Supreme Court of the State of California for a hearing and/or Writ of Review and Stay Order. Said Court also summarily denied said petition without hearing on June 23, 1977. Appendix "C".

JURISDICTION

The date of the judgment sought to be reviewed is June 23, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

QUESTIONS PRESENTED

I

CAN A STATE ALCOHOLIC BEVERAGE LICENSING AGENCY PROHIBIT A LICENSEE FROM

OFFERING LIVE ENTERTAINMENT CONSISTING OF SCANTILY CLAD AND/OR NUDE MODERN DANCE PERFORMANCES WHERE IT IS UNCONTESTED ON THE RECORD THAT THE PERFORMANCES CONSTITUTE EXPRESSIVE ENTERTAINMENT PRESUMPTIVELY PROTECTED BY THE FIRST AMENDMENT AND UTTERLY LACKING ANY ELEMENTS OF "GROSS SEXUALITY" AND/OR "INCIDENTS OF A BACCHANALIAN REVELRY" AMOUNTING TO A PUBLIC NUISANCE?

II

CAN A STATE ALCOHOLIC BEVERAGE LICENSING AGENCY APPLY A RULE PROHIBITING NUDE ENTERTAINMENT AT LICENSED PREMISES WITHOUT REGARD TO THE CONSTITUTIONAL CONTEXT AND CHARACTER OF THE PERFORMANCES TO WHICH SAID RULE IS APPLIED?

III

CAN A STATE ADMINISTRATIVE AGENCY DISCIPLINE A LICENSEE FOR CONDUCT PRE-

SUMPTIVELY PROTECTED BY THE FIRST AMENDMENT WHERE NO PROVISION EXISTS UNDER STATE LAW FOR A PROMPT JUDICIAL HEARING, OR ANY JUDICIAL HEARING AS A MATTER OF RIGHT, ON THE ISSUE OF THE FIRST AMENDMENT PROTECTION OF THE CONDUCT?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the First Amendment (and to the extent the First Amendment applies to the States, the Fourteenth Amendment) to the United States Constitution, California Department of Alcoholic Beverage Control Rule 143.3, and California Business and Professions Code §§23089, 23090 and 23090.5.

First Amendment:

> "Congress shall make no law -- abrdiging the freedom on speech, ..."

Fourteenth Amendment:

> "Section 1 ... No state shall make or enforce any law which shall abridge

the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws. ..."

Department Rule 143.3:

Acts or conduct on licensed premises in violation of this rule are deemed contrary to public welfare and morals, and therefore no on-sale license shall be held at the premises where such conduct or acts are permitted.

"Live entertainment is permitted on any licensed premises, except that:

"(1) No licensee shall permit any person to perform acts of or acts which simulate:

"(a) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.

"(b) The touching, caressing or fondling on the breast, buttocks, anus or genitals.

"(c) The displaying of the pubic hair, anus, vulva or genitals.

"(2) Subject to the provisions of subdivision (1) hereof, entertainers whose breasts and/or buttocks are exposed to view shall perform only upon a stage at least 18 inches above the immediate floor level and removed at least six feet from the nearest patron.

"No licensee shall permit any person to use artificial devices or inanimate objects to depict any of the prohibited activities described above.

"No licensee shall permit any person to remain in or upon the licensed premises who exposes to public view any portion of his or her genitals or anus.

"If any provision of this rule or the application thereof to any person or

circumstances is held invalid, such invalidity shall not affect other provisions or application of the rule which can be given effect without the invalid provision or application, and to this end the provisions and this rule are severable."

California Business and Professions Code §23089:

"Final orders of the board may be reviewed by the courts specified in Article 5 (commincing with Section 23090) of this chapter within the time and in the manner therein specified and not otherwise."

California Business and Professions Code §23090:

"Any person affected by a final order of the board, including the department, may, within the time limit specified in this section, apply to the Supreme Court or to the court of appeal for the appellate district in which the proceeding arose, for a writ of review of such final order. The

application for writ of review shall be made within 30 days after filing of the final order of the board."

California Business and Professions Code §23090.5:

"No court of this state, except the Supreme Court and the courts of appeal to the extent specified in this article, shall have jurisdiction to review, affirm, reverse, correct, or annul any order, rule, or decision of the department or to suspend, stay, or delay the operation or execution thereof, or to restrain, enjoin, or interfere with the department in the performance of its duties, but a writ of mandate shall lie from the Supreme Court or the courts of appeal in any proper case."

STATEMENT OF THE CASE

This is a petition which seeks review of the aforesaid revocation of Petitioenr's license to sell alcoholic beverages for

violation of the Department's Rule 143.3 proscribing nude dancing in Petitioner's "neighborhood theatre." Petitioner's theatre is in a proper local zone and his performances are not prohibited by any local or state penal law. The accusation and disciplinary action imposed herein is based uponthe mere presentation of scantily clad and/or nude modern dance performances on a raised stage in the licensed premises. No finding was made that any of the instances of scantily clad and/or nude dancing found to have occurred in Petitioner's premises were in any way obscene or "grossly sexual" or disturbing to the community citizenry. Additionally, at no time during said dance performances was there any contact whatsoever between any patron and any performer, no profane remarks or suggestions were made by patrons to the dancers during performances nor did any disturbances result from said performances. The dancers were scantily clad and/or nude only during their dance performances in the theatre

on the fixed, raised stage which was adequately separated from all patrons, which was in an establishment with fixed theatre style seats so arranged that a body of spectators had an unobstructed view of the stage upon which movable scenery was used and theatrical performances were given.

That the aforesaid nude dance presentations occurred in Petitioner's premises as described is as uncontested by Respondent as it is totally unrebutted on the record that said dance performances constituted "communicative expression" rather than "gross sexuality," "hardcore pornography" or a "bacchanalian revelry" and that such occurred in a theatre or similar establishment. (See testimony of theatre arts expert witness Ms. Virginia Chase, Appendix "D", at pp. 100, 125, 144, 150 and 159.) Thus, Petitioner contends herein, before Respondent administrative bodies as he did, that Rule 143.3 is unconstitutional as applied to

the specific dance performances herein in that such application is violative of the First and Fourteenth Amendments of the United States Constitution.

REASONS FOR GRANTING THE WRIT

A. Rule 143.3 Is Violative Of The First Amendment As Applied To The Specific Dance Performances Herein In That The Conduct At Issue Does Not Fall Within The Range Of "Gross Sexuality" That Can Be Constitutionally Prohibited Thereby.

That nude dancing is protected by the First Amendment is not subject to doubt. Salem Inn, Inc., et al. vs. Frank, 501 F.2d 18, 20-21, (2d Cir. 1974), Affirmed Sub. Nom. Doran vs. Salem, Inn, 95 S.Ct. 2561 (1975), California vs. LaRue, 409 U.S. 108, 118 (1972), Atwood vs. Purcel, 402 F.Supp. 231, 234 (D. Az. 1975). In LaRue, this Court considered the scope of the Department's Rule 143.3 and without any particularized facts held that notwithstanding

the Rule's broad sweep of protected expression within its terms, the Department's Rule would be upheld as a facially valid exercise of the Department's regulatory power. The Court carefully limited the scope of its holding by recognizing that "that specific future applicatio of [the Rule] may engender concrete problems of constitutional dimension... . We deal here only with the statute on its face." 409 U.S. at 119, Note 5.

Thus, the LaRue decision stands only for the validity of the Rule on its fact, apart from and without reference to any particular factual context. Indeed, Justice Douglas dissent admonished the Court that it should reserve decision on the constitutionality of the Rule until the State Board gave the "generalized provisions of the Rules ... particularized meaning" 409 U.S. at 123. The instant case raises the critical issue left unresolved by the LaRue coourt: Whether Rule 143.3 can be applied indiscriminately to specific dance

performances presented within a factual context that is neither lewd nor grossly sexual nor in any way a public nuisance. Notwithstanding the limiting language of LaRue, the Respondent Department maintains that LaRue somehow sanctione the pro tanto repeal of the First Amendment as to any and all dancing literally falling within the rule's language. In the years since the LaRue decision, the lower federal courts have rejected this simplistic interpretation. In Escheat, Inc. vs. Pierstorff, 354 F.Supp. 1121 (W.D. Dis. 1973), the district court undertook to assess the constitutional status of nude dancing in the wake of LaRue:

> "A preliminary issue is whether, in the aftermath of LaRue, supra, any activity taking place within a licensed tavern can be protected by the First Amendment ... . Although the [LaRue] majority does not face the question directly, it implies that not all performances of this genre may constitutionally be prohibited in bars:

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> "... we would poorly serve both the interests for which the State may validly seek vindication and the interests protected by the First and Fourteenth Amendments were we to insist that the sort of bacchanalian revelries which the Department sought to prevent by these liquor regulations were the constitutional equivalent of a performance by a scantily clad ballet troupe in a theater."
>
> "... I conclude that some shows which fall somewhere between Mary Poppins, on the one hand, and 'Bacchanalian revelries,' on the other, even when performed in a bar, continue to be entitled to First Amendment protection."

In line with this analysis, it has been several times held that the LaRue decision sanctioned the exercise of the State's regulatory power over liquor sales only in the very limited area where the dance performances "partake more

of gross sexuality than of communication." Clark vs. City of Freemont, Nebraska, 377 F.Supp. 327, 341-42 (D. Neb. 1974), Peto vs. Cook, 364 F.Supp. 1, 3 (S.D. Ohio 1973), cert. den. 415 U.S. 93 (1973).

Petitioner contends as a factual matter that the particular dance performances offered by his establishment do not materially differ for First Amendment purposes from performances offered by a "scantily clad ballet troupe." With respect to the dance performances offered by Petitioner, the Respondent Department has never charged nor has any findings ever been made that the performances are "obscene," "gross sexual" or "akin to Bacchanalian revelry". Further, the Department has never alleged much less offered proof that with respect to any of the dance performances offered by Petitioner there has been any contact between patrons and any performer, nor that profane language has been used, nor that any disturbance involving the public morals has resulted from the Petitioner's

dance performances. Indeed, there would appear to be little factual dispute that the concrete dance performances offered by Petitioner are wholly artistic and expressive, in sharp contrast to the generalized reports of "grossly sexual" conduct which were before the LaRue Court in the abstract.

Whatever ambiguity may have been present as to the scope of the LaRue decision has been removed by this Court last term in the case of Craig vs. Boren, ___U.S.___, 97 S.Ct. 451 (1976). In that case, the Court, through Justice Brennan, expressly limited LaRue, holding that the State may discipline license holders on the basis of presumptively First Amendment activities only in the narrow area where the restricted conduct "partakes" more of gross sexuality than communication. Therein this Court rejected the contentions of the State that its powers to regulate the consumption of alcohol under the Twenty-First Amendment extended so far as to

it from the requirements of Equal Protection. The Court noted that while the Twenty-First Amendment has been deemed to create a partial exception to the normal operation of the Commerce Clause restriction on state regulation,

> "Once passing beyond consideration of the Commerce Clause, the relevance of the Twenty-First Amendment to other constituional provisions becomes increasingly doubtful. ... Any departure from this historical view have been limited and sporadic."

97 S.Ct. at 461.

The Court went on to show that cases involving individual rights protected by the Due Process Caluse have been historically afforded close protection, notwithstanding the State's asserted interest in regulating the consumption of alcohol. 97 S.Ct. at 462. The Court then distinguished LaRue, stating as follows:

> "It is true that California v. LaRue ... relied upon the Twenty-First

> Amendment to 'strengthen' the State's authority to regulate live entertainment at establishments licensed to dispense liquor, at least when the performances 'partake more of gross sexuality than of communiction.' ... Nevertheless, the Court has never recognized sufficient 'strength' in the amendment to defeat an otherwise established claim of invidious discrimination in the violation of the Equal Protection Clause. [Emphasis added.]

97 S. Ct. at 462.

Thus, under this Court's most recent analysis the LaRue decision must be deemed to be nothing more than a "limited and sporadic" departure from the historic position of the Supreme Court that the Twenty-First Amendment does not work a repeal of the First Amendment. Petitioner submits that the LaRue decision must be strictly construed as to its procedural and factual

posture. And it is most urgently submitted that the LaRue decision never reached the issue herein presented, whether the State can revoke Petitioner's license on the basis of dance performances acknowledged and admitted by the Respondent to be "expressive" in nature and not "partaking of gross sexuality."

It is respectfully submitted that the rationale of the LaRue decision as elucidated by subsequent authorities cited above prohibits application of Rule 143.3 to nude dance performances not partaking of gross sexuality. Accordingly, it is respectfully urged upon this Court that no disciplinary action can be based upon the mere proof of nude dancing absent specific findings that each such instance partook of "gross sexuality akin to a Bacchanalian revelry." Because no such findings were made herein, nor any evidence whatseover presented by Respondent to support such findings, the application of said Rule herein is beyond the limits set by this Court in LaRue.

B. The Administrative Disciplinary Scheme At Issue Violates Petitioner's Right To Due Process Under The Fourteenth Amendment.

It is further respectfully submitted that the administrative disciplinary scheme herein is violative of the First and Fourteenth Amendments in that no prompt judicial hearing is afforded prior to adverse administrative action against the licensee. For in Clark vs. City of Freemont, Nebraska, 377 F.Supp. 327 (D. Neb. 1974), the district court struck down a scheme of licensing similar to that herein and held that a judicial hearing is required to determine whether the conduct at issue falls within the "gross sexuality" concept of LaRue. If not, said conduct should not be the basis for adverse action against the licensee unless found to be obscene. 377 F.Supp. at 342.

When these principles are applied to the administrative scheme herein, the glaring deficiency thereof becomes self-evident. Under §23089 of the Business and Professions Code

of the State of California, final orders of the Respondent Department are to be reviewed only in the manner specified by Article 5 (commencing with §23090) of the Business and Professions Code. Under §23090.5 of the Business and Professions Code, no Court of the State has jurisdiction to "review, affirm, reverse, correct, or annul" any order, rule or decision, except that the Court of Appeal or the Supreme Court may hear appeals by way of discretionary writ. Such a statutory scheme operates flatly to deny your Petitioner any opportunity for a judicial hearing as a matter of right as to the "gross sexual" character of Petitioner's performances as required by Clark. The gravity of this denial of due process becomes sharpened in that it creates a "prior restraint" on Petitioner's exercise of First Amendment rights thereby "chilling" their exercise in a manner uniformly condemned by the Courts. Smith vs. California, 361 U.S. 147 (1959); Freedman v. Maryland, 380 U.S. 51

(1965); Clark v. City of Fremont, Nebraska, supra, 377 F.Supp. 327.

Rule 143.3 and §§23089 and 23090 of the Business and Professions Code combine to create a procedural scheme with no provision for judicial review of Department orders, except by a discretionary writ on appellate levels. It is manifest that this procedural insulation of Department action from full judicial review directly contravenes the constitutional principles articulated by Clark, supra.

CONCLUSION

In 1970 the Respondent Department promulgated certain rules respecting the presentation of nude entertainment in licensed premises. Without the benefit of any concrete factual evidence, and strictly on the record of administrative hearings, this Court upheld the facially validity of the Department's Rule 143.3. In doing so the Court acknowledged the very real possibility that the application of the

Department's Rule to particular factual situations could engender problems of constitutional dimension and expressly reserved opinion as to the permissible scope of the Rule's application. In the intervening years, a body of federal case law has grown to the effect that the LaRue decision is limited to sanctioning the application of rules such as the Department's Rule 143.3 to factual situations having the "grossly sexual" character of the conduct of which the Court was aware by reason of the record in the Department's hearings. Craig vs. Boren, ___U.S.___, 97 S.Ct. 451 (1976), Escheat, Inc. vs. Pierstorff, 354 F.Supp. 1120 (W.D. Wis. 1973), Clark vs. City of Fremont, Nebraska, 377 F.Supp. 327 (D. Neb. 1974) and Peto vs. Cook, 364 F.Supp. 1 (S.D. Ohio 1973) cert. den. 415 U.S. 93.

Petitioner contends that under these decisions the particular dance performances he offers do not fall within the limited set

of grossly sexual performances recognized by LaRue to be the proper subject of Department regulation.

As is manifest from the Department's Appeals Board decision, Appendix "C", the Respondent has choosen to ignore these holdings and instead to proceed with the enforcement of its Rule 143.3 as to protected expression falling outside the limits of the Rule's application. All state avenues having been exhausted, it is now incumbent upon this Court to instruct Respondents as to the governing constitutional principles. For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

By: _____
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APPENDICES TO PETITION FOR WRIT OF CERTIORARI TO THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD OF THE STATE OF CALIFORNIA

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SUBJECT INDEX

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APPENDIX "B" ..... Order of the Court of Appeal of the State of California, Fourth Appellate District, denying writ of review, entered on May 26, 1977

APPENDIX "C" ..... Order of the Supreme Court of the State of California, denying writ of review, entered on June 23, 1977

APPENDIX "D" ..... Expert Testimony of Ms. Virginia Francis Chase

APPENDIX A

FILED
APR 29 1977
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

OF THE STATE OF CALIFORNIA

In the Matter of the Accusation Against PAUL A. RICHTER dba The Body Shop 3776 Riley Street San Diego Respondent and Licensee On-sale general license Under the Alcoholic Beverage Control Act.	AB-4350 File 24157; Reg. 5216 ALJ: Gruen Date and Place of Hearing: January 26, 1977 314 West First Street Los Angeles, California For Department: Honorable Evelle J. Younger Attorney General Marilyn Mayer Deputy Attorney General For Appellant: Joshua Kaplan, Esq.

Appellant Paul A. Richter, doing business as The Body Shop, has appealed a decision of the Department of Alcoholic Beverage Control which determined:

"1. The Department's motion to dismiss Counts II, III, IV and VI of the Accusation and to amend licensee's previous record to show 'finality' of decision relative to Accusation 43, 4-10-74 and Accusation 18386, 7-30-73, should be granted.

"2. Exhibit A (reporter's partial transcript in file 32772; Reg. 43) is admitted into evidence.

"3. Article XX, Section 22 of the

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EXHIBIT B

California Constitution and Sections 24200(a) and (b) of the Business and Professions Code are not unconstitutional and there is no violation found of the First and Fourteenth Amendments to the United States Constitution.

"4. Section 143.3(1)(c), California Administrative Code was not unconstitutionally applied to the performances in the facts found above, and there is no violation found of the First and Fourteenth Amendments to the United States Constitution.

"5. It was not established that there existed conspiratorial motives or bad faith on the part of enforcement officials whereby respondent and others similarily situated were subjected to selective and arbitrary enforcement of the law.

"6. Respondent violated Section 143.3(1)(c), California Administrative Code as to Counts I through IV of the findings of fact above. Grounds for disciplinary action against respondent's license have been established pursuant to Sections 24200(a) and (b) of the Business and Professions Code and Article XX, Section 22 of the California Constitution."

As a penalty the department revoked respondent's license as to each of Counts I through IV of the decision.

The department's decision further provides:

"A. Ruling on Notice of Special Defense: All of the special defenses and any motion contained therein, are each overruled and denied.

"B. Pursuant to stipulation the matter was heard in Los Angeles, California.

"C. The Department moved to

dismiss Counts II, III, IV and VI of the Accusation, and moved to amend licensee's previous record to show the decision was final relative to Accusation 43, 4-10-74 and Accusation 18386, 7-30-73.

"D. The matter was submitted subject to the right of the parties to submit briefs and points and authorities. Respondent's briefs and points and authorities were filed on July 14, 1976. The Department filed its brief and points and authorities on July 30, 1976.

"Pursuant to stipulation of the parties, the Administrative Law Judge makes the findings of fact, as follows:

"FINDINGS OF FACT:

"COUNT I

"On or about October 9, 1975, the above-named on-sale licensee did permit Denise LaMont to perform acts in the above-designated on-sale licensed premises at which time said Denise LaMont did display her pubic hair.

"COUNT II

"On or about November 8, 1975, the above-named on-sale licensee did permit Donna Diane Millard and Linda Sue Spring to perform acts in the above-designated on-sale licensed premises at which time said Donna Diane Millard and Linda Sue Spring did display their pubic hair.

"COUNT III

"On or about November 21, 1975, the above-named on-sale licensee did permit females known only as Felicia and Donna to perform acts in the above-designated on-sale licensed premises at which time said females known only as Felicia and Donna did display their pubic hair.

"COUNT IV

"On or about March 16, 1976, the above-named on-sale licensee did permit Sherry Duke and Ruth Rae Bridwell to perform acts in the above-designated on-sale licensed premises at which time said Sherry Duke and Ruth Rae Bridwell did display their pubic hair.

"SPECIAL FINDINGS:

"It was stipulated by the parties that the reporter's partial transcript be identified and received in evidence as Exhibit A and that testimony contained therein be received as if the witness were called, sworn and testified at the herein hearing subject to the same objections of record contained in said Exhibit A.

"LICENSEE PREVIOUS RECORD:

"Paul A. Richter type '48' licensed as individual at above premises since 11-17-75 with no disciplinary action.

"Paul A. Richter, President and sole stockholder of Paul Richter & Associates, Inc., type '48' licensed at above premises from 1-31-68 to 11-17-75 with the following:

"Accusation 43, 4-10-74, Rule 143.3 (1)(c) - 11 counts, Rule 143.3(1)(b) & (c) 1 count, & Rule 143.3(2) - 1 count, Decision: 45 days/fifteen stayed, Appeals decided adverse to respondent. Decision final.

"Accusation 18981, 11-12-73, Rule 143.3(1)(c) - 22 counts, Rule 143.2(1) - 1 count, Rule 143.2(2) - 2 counts, and Rule 143.3(2) -- 12 counts, Decision of 11-28-75: 30 days/ 10 stayed; appealed, pending.

"Accusation 18386, 7-30-73, Rule 143.3(1)(c) - 20 counts, Rule 143.3(2) - 1 count, Decision of 3-21-74, thirty days/

ten stayed, Appealed, 3-4-76 (sic). All appeals resolved adverse to respondent. Decision final.

"Accusation 7562, 2-21-69, 24200 a B & P & Sec. 22, Art. XX, State Constitution; 11-17-71 ten days/five stayed (imposition of penalty stayed pending U.S. Supreme Court Decision in the LaRue case); POIC (3771.63) accepted on 8-6-73 in lieu of ten days/five stayed.

"Accusation 11791, 11-24-70, 25658a & b & 25665, 3-1-71 fifteen days/ten stayed, eff. 6-24-71 (posted).

"Accusation 12043, 1-8-71, 25665 & 25663: 4-1-71 twenty-five days/fifteen stayed, POIC ($1,108.60) accepted in lieu on 6-17-71.

"Paul A. Richter type '40' licensed at above premises as individual from 2-14-66 to 3-17-67; type '48' licensed at above premises as individual from 2-16-67 to 1-31-68, with the following:

"Type '48' licensed:

"Accusation 3415, 4-20-67, 25658 a & b & 25665; 4-20-67 five days, POIC ($250) in lieu on 6-2-67.

"Accusation 4001, 1-27-67, 25658 a & b & 25665, 8-24-67 fifteen days/ten stayed, POIC accepted on 11-17-67 (five days); and reimposition of ten days stayed for POIC ($1,543.26) accepted on 8-6-73.

"Accusation 4947, 12-26-67, 25632, 6-8-70, ten days, POIC ($1,408.80) accepted on 7-8-70."

Appellant appeals under Business and Professions Code section 23084, subsections (a), (b), (c) and (d).

The department dismissed Counts II, III, IV and VI

of the accusation at the hearing. The attorneys for the department and respondent stipulated as to the truth of Counts I, V, VII and VIII of the accusation (Counts I, II, III and IV of the department's decision). They also stipulated that a partial transcript of the testimony of one Virginia Chase, In Case No. L-6576, be received into evidence as if Ms. Chase had testified at the instant hearing (Respondent's Exhibit A), with the objections thereto also in full force and effect, to be ruled upon by the Administrative Law Judge presiding over the instant department hearing regardless of prior rulings. Ms. Chase had testified as an expert witness with regard to the definition of a "dance" and related matters in the previous department hearing.

Appellant filed a petition with the appeals board to suspend this proceeding before the appeals board pending the outcome of a hearing scheduled by the department relative to whether section 143.3 of the California Administrative Code,[1] should be repealed or amended, and pending an action filed by the

---

1/ Section 143.3 states in pertinent part: "Acts or conduct on licensed premises in violation of this rule are deemed contrary to public welfare and morals, and therefore no on-sale license shall be held at any premises where such conduct or acts are permitted.

"Live entertainment is permitted on any licensed premises, except that:

"(1) No licensee shall permit any person to perform acts of or acts which simulate:"

* * *

"(c) The displaying of the pubic hair, anus, vulva or genitals."

appellant in the United States Ninth Circuit Court of Appeals, entitled Richter v. The Dept. of Alcoholic Bev. Control, (Case No. 76-2422).

With regard to the stay requested by appellant due to the aforementioned hearing by the department, we find said request devoid of merit. There is no evidence in the record that a repeal of section 143.3 is pending nor imminent. Moreover, repeal of said rule would not necessarily affect violations occurring prior thereto.

With regard to appellant's request for a stay of these proceedings due to his appeal to the United States District Court of Appeal for the Ninth Circuit, supra, Business and Professions Code section 23084(e) and Article XX, section 22 of the California Constitution, cited by appellant, permit a remand (not a suspension) only and this is only when relevant evidence could not have been produced, or was excluded, at the department hearing. Appellant has shown no relevant evidence which was not considered by the department. The appeals board is not aware of any legal authority to suspend a proceeding before it on appeal. A matter is stayed by law while being considered by this board and during the time that an application may be made for a Writ of Review to the appellate courts (Business and Professions Code section 23090.7); hence, granting such a stay would be a redundant act. Finally, in People v. Green, 66 Cal.App.3d 801, the court stated:

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> "California courts also have recognized that a federal district court cannot impose a duty to act upon any state court and that a state court acts independently and voluntarily in responding to the federal order. (See People v. Fasanella (1971) 14 Cal.App.3d 1004 [92 Cal.Rptr. 655]; People v. Hamilton (1975) 50 Cal. App.3d 470 [123 Cal.Rptr. 390].)" (People v. Green, 66 Cal.App.3d 801, at p. 804.)

Upon appeal appellant contends: the enforcement of section 143.3 against him would amount to a deprivation of rights guaranteed under the First and Fourteenth Amendments to the Constitution of the United States in at least three respects: (1) that section 143.3 cannot, consistent with the guarantees of the First Amendment, apply to forbid dance performances in a neighborhood theater absent gross sexuality on the facts of the particular application, (2) that it is inconsistent with the due process guarantee of the Fourteenth Amendment read in light of the First Amendment context of this action, for the determination of gross sexuality to be made by any other than a judicial tribunal in the first instance, and (3) that the procedure herein, by not guaranteeing applicant judicial review of the department's decision as a matter of right, fails to afford appellant minimum due process, and violates Article XX, section 22 of the Constitution of the State of California; and, appellant further submits that the drastic remedy herein sought, revocation of his license, is so excessive and abusive in relation to the conduct at issue as to be beyond the department's

administrative discretion.

Appellant's contention that since gross sexuality was not proven as to the dance performances, section 143.3 constitute a violation of the First Amendment as applied to the specific violations herein, is devoid of merit. The violations stipulated to specifically indicate the licensee of the subject premises simply permitted individual females to display their pubic hair. The testimony in Respondent's Exhibit A did not pertain to the acts on the dates in question. However, assuming arguendo the exposures herein in some manner partook of communication, we find appellant's "gross sexuality" argument to be unpersuasive in view of the reaffirmation of the simple nudity test of California v. LaRue, (1972), 409 U.S. 109 [93 S.C 390], in Doran v. Salem Inn, Inc., (1975) 95 S.Ct. 2561. In Doran the United States Supreme Court stated:

> "Although the customary 'bar room' type of nude dancing may involve only the barest minimum of protected expression, we recognized in California v. LaRue, 409 U.S. 109, 118, 93 S.Ct. 309, 397, 34 L.Ed. 2d 342 (1972), that this form of entertainment might be entitled to First and Fourteenth Amendment protection under some circumstances. In LaRue, however, we concluded that the broad powers of the states to regulate the sale of liquor, conferred by the Twenty-First Amendment, outweighed any First Amendment interest in nude dancing and that a state could therefore ban such dancing as a part of its liquor license program."
> (Emphasis ours, p.2568.)

(The Doran Court went on to conclude, that the statute being

considered therein was unconstitutional because it went beyond licensed premises in its application.)

Appellant's contention that the instant procedure amounts to an unconstitutional prior restraint on appellant's constitutional right of free expression under the First and Fourteenth Amendments, is devoid of merit (California v. LaRue, supra, 409 U.S. 109 [93 S.Ct. 390] and Doran v. Salem Inn, Inc., supra, 95 S.Ct. 2561). There was no injunction applied by the department prior to its hearing regarding the instant accusation under section 143.3, a fortiori, the licensee was and is allowed to proceed with his alleged communicative acts without any prior restraint thereon. Moreover, as heretofore indicated, the department is not allowed to enforce its decision during the pendency of an appeal with the Alcoholic Beverage Control Appeals Board and during the time appellant may file a Writ of Review with the District Court of Appeal or Supreme Court after the Appeals Board's decision (Business and Professions Code section 23090.7). Clark v. The City of Fremont, Nebraska, 377 F.Sup. 327, is not applicable because it misinterprets the decision of LaRue to mean that a finding upon gross sexuality is required in licensed premises. As stated in Doran v. Salem Inn, Inc., supra, gross sexuality is not the test that is required in LaRue; mere nudity in a licensed premises is sufficient.

Appellant's contention that the instant procedure fails to afford him a meaningful opportunity to be heard and denied

him due process of law, is devoid of merit. This is not a situation as the court was faced with in Misurelli v. City of Racine, 346 F.Sup. 43, where the liquor license might expire prior to a final determination of the denial of the liquor license's renewal; and, that the only grounds for reversal of the liquor license denial would be if the municipality decision had been found to be arbitrary, capricious or discriminatory. Under Business and Professions Code section 23090.2, a court on review (as did this board) may consider whether: the department has proceeded without or in excess of its jurisdiction; the department has proceeded in the manner required by law; the decision of the department is supported by the findings; the findings in the department's decision are supported by substantial evidence in the light of the whole record; and, there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the department. Moreover, any person affected by a final order of the appeals board, may, under Business and Professions Code section 23090, apply to the Court of Appeal or the Supreme Court for a Writ of Review of said final order within thirty days after the filing of said final order Under Business and Professions Code section 23090.7, no decision of the department which has been appealed to the board and no final order of the board shall become effective during the period in which a petition may be made for such a Writ of Review; and,

under Business and Professions Code section 23090.6, the court before which the Petition for a Writ of Review is filed may stay or suspend, in whole or in part, the operation of the order, rule, or decision of the department.

Appellant's contention that Article XX, section 22 of the California Constitution has been violated by a change in the law which removes the right for judicial review of appeals board decisions in all cases, is devoid of merit. The subject Constitutional provision states: "Orders of the board shall be subject to judicial review upon petition of the director or any party aggrieved by such order." (Emphasis added.) It does not state: "Orders shall be reviewed." Since the appellant has the ability to appeal the board's decision to the courts of appeal of the State of California under Business and Professions Code section 23090, with the concomitant right to have the decision stayed upon said appeal, the provision in Article XX, section 22 has been appropriately provided for by statutory law. (Also see: Francisco Enterprises, Inc. v. Kirby, 482 F.2d 481, which concludes that the department is a state court of limited jurisdiction.)

Appellant's contention that the penalty of revocation lies beyond the legal boundaries of the department's regulatory discretion under these facts, is devoid of merit. Many of the previous violations of appellant have become final. Walsh v. Kirby, 13 Cal.3rd 95, cited by appellant, indicates that in a fair trade matter the department must serve an accusation on a licensee

prior to the date of a subsequent violation, in order to be permitted to file a subsequent accusation based upon said subsequent violation; no final decision is required before the subsequent accusation can be filed, however. Walsh does not concern situations, such as this, involving an habitual violator. The department is given broad discretion as to the imposition of a penalty (Cadilla v. Bd. of Medical Examiners, 26 Cal.App.3rd 961; Lake v. Civil Service Commission, 47 Cal.App.3rd 224). Since the record demonstrates appellant is an habitual offender as to the rule involved and unwilling to conform (Dave's Market, Inc. v. Dept. of Alcoholic Bev. Control, 222 Cal.App.2d 671 [35 Cal. Rptr. 348]), we cannot say imposition of the penalty of revocation in this case constitutes an abuse of discretion as a matter of law. (See Martin v. Alcoholic Bev. Control Appeals Bd. & Haley, 52 Cal.2d 287 [341 P.2d 296].) As discussed, supra, this decision of the department, as were all of its other decisions pertaining to appellant, is "subject to" judicial review.

There is no merit to the issues raised upon appeal. The evidence supports the findings, and the findings support the department's decision, which is affirmed.

PETER M. FINNEGAN, CHAIRMAN
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

We Concur:
Patricia Wilkey
Eugene V. Lipp

APPENDIX B

COURT OF APPEAL—STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

COURT OF APPEAL-FOURTH DIST.

FILED

MAY 26 1977

ERVIN J. TUSZYNSKI, Clerk

DEPUTY CLERK

DIVISION ONE

PAUL A. RICHTER,
Petitioner,
vs.
BAXTER RICE, Director, Department of Alcoholic Beverage Control Board, etc., et al,
Respondents.

4 Civil No. 16628

SUPERIOR COURT NO. -

Alcoholic Bev. Control #4350
File 24157

BY THE COURT:

The petition for writ of review with request for temporary stay is denied (California v. LaRue, 409 U.S. 109 [93 S. Ct. 390]; Moran v. Salem Inn, Inc., 422 U.S. 922, 932-933 [95 S. Ct. 2561, 2568]; Crownover v. Musick, 9 Cal. 3d 405; Department of Alcoholic Bev. Control v. Superior Court, 268 Cal. App. 2d 67).

Brown
Presiding Justice

Copies to: Hertzberg, Kaplan & Koslow-LA
Attorney General-SD

EXHIBIT B APPENDIX "B"

APPENDIX "C"

Kaplan.

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

JUN 23 1977

I have this day filed Order

HEARING DENIED

In re: 4 Civ. No. 16628

Richter

vs.

Rice

Respectfully,

G. E. BISHEL
Clerk

APPENDIX D

OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF CALIFORNIA

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

IN THE MATTER OF THE ACCUSATION AGAINST:

PAUL RICHTER & ASSOCIATES, INC., DBA THE BODY SHOP, 3776 RILEY STREET SAN DIEGO CALIFORNIA 92110

CASE NO. L-6576

REPORTER'S TRANSCRIPT

SAN DIEGO, CALIFORNIA

DECEMBER 13, 1974

PRESENT:

WILLIS MEVIS, ADMINISTRATIVE LAW JUDGE
HARRISON W. HERTZBERG, ESQ., COUNSEL FOR THE RESPONDENT
DORIS H. JAFFE, STAFF COUNSEL

REPORTED BY: B. LOIS HUGHES, CSR NO. 3031

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DIRECT EXAMINATION

BY MR. HERTZBERG:

Q WHAT IS YOUR PRESENT BUSINESS OR OCCUPATION, MISS CHASE?

A I'M PRESENTLY WORKING AS ASSISTANT DIRECTOR AT WARNER BROTHERS ON FEATURE FILM PRODUCTIONS.

Q AND DO YOU WORK IN THE FIELD OF THEATER ARTS?

A YES.

Q HAVE YOU HAD ANY EDUCATION IN THE FIELD OF THEATER ARTS?

A YES.

Q COULD YOU TELL US IN CHRONOLOGICAL ORDER THE EDUCATION YOU HAVE HAD, THE SCHOOLS YOU WENT TO, THE DEGREES YOU HAVE RECEIVED?

MS. JAFFE: ALL RIGHT. AT THIS POINT, I WILL INTERPOSE OBJECTIONS ON THE FOLLOWING BASIS: I OBJECT TO QUESTIONS REGARDING THE THEATER EDUCATION OF THE WITNESS ON THE BASIS -- AND WILL ALSO OBJECT TO POSSIBLE FORTHCOMING TESTIMONY REGARDING THE EXPERIENCE OF THE WITNESS IN THIS FIELD -- ON THE BASIS THAT IT IS IMMATERIAL AND IRRELEVANT, AS IN THIS INSTANCE WE ARE DEALING WITH A LICENSED PREMISES, A PUBLIC PREMISES OR A COCKTAIL BAR, WHICH IS DIFFERENT THAN A THEATER, AND HENCE THE OBJECTION ON THE GROUNDS OF IRRELEVANCY AND IMMATERIALITY.

THE HEARING OFFICER: COUNSEL?

MR. HERTZBERG: WELL, I INTEND TO QUALIFY THIS WITNESS AS AN EXPERT IN THE FIELD OF THE DANCE. I INTEND TO HAVE HER SO WELL QUALIFIED WITHOUT QUESTION AS AN EXPERT IN THEATER ARTS I HAVE TO -- I INTEND TO PLACE HER INTO THE AREA OF WHETHER THE

PERFORMANCES AT THE BODY SHOP, WHICH SHE HAS NOT ONLY SEEN BUT SEEN FILMS OF, PARTAKES MORE OF GROSS SEXUALITY THAN OF COMMUNICATION.

PRIMARILY, SHE WILL TESTIFY AS AN EXPERT IN THE COMMUNICATION OF DANCE AND THEATER ARTS. SECONDARILY, SHE WILL ALSO TESTIFY THAT THE PERFORMANCES AT THE BODY SHOP, WHICH SHE HAS SEEN, AS I SAY, ARE MORE CLOSELY ALLIED TO A BALLET. SHE WILL GO INTO THE BALLET, THAT THE DANCE IS NO DIFFERENT THAN A BALLET EXCEPT IT'S A QUESTION OF TASTE, AND THESE ARE NOT BACCHANALIAN REVELRIES AS OUTLINED IN LA RUE AND IS KNOWN AS THE -- THAT THE LA RUE RULES, AS APPLIED TO THIS DANCE - AND WE'RE RAISING THE CONSTITUTIONAL ISSUE AS APPLIED TO THIS DANCE - ARE CONSTITUTIONAL OR ARE NOT COVERED THEREBY. AND SHE, AS AN EXPERT, WILL SO TESTIFY.

MS. JAFFE: WELL, MY READING OF LA RUE REQUIRES ONLY NAKED ENTERTAINMENT IN LICENSED PREMISES. I BELIEVE THAT COUNSEL'S OFFER OF PROOF GOES BEYOND THE DECISION AND ADDS MUCH CREATIVE INTERPRETATIONS THERETO. AND I WOULD SUBMIT FOR THE RECORD MY OBJECTION ON THE BASIS THAT IT IS WITHIN COMMON KNOWLEDGE THAT THERE IS A GREAT DISTINCTION BETWEEN A THEATER AND A TAVERN OR COCKTAIL BAR.

MR. HERTZBERG: MAYBE YOU AND I UNDERSTAND THE DECISION, CALIFORNIA VERSUS LA RUE, DIFFERENTLY, BUT AS TO THE DECISION, IT SPECIFICALLY SAYS, "BECAUSE OF THE POSTURE OF THIS CASE, WE HAVE NECESSARILY DEALT WITH THE REGULATIONS ON THEIR FACE AND HAVE FOUND THEM TO BE VALID. THE ADMONITION CONTAINED IN THE COURT'S OPINION IN SEAGRAM AND SONS VERSUS HOSTETTER, SUPRA, IS EQUALLY IN POINT HERE: 'ALTHOUGH IT IS POSSIBLE THAT SPECIFIC

FUTURE APPLICATIONS' OF THESE RULES 'MAY ENGENDER CONCRETE PROBLEMS OF CONSTITUTIONAL DIMENSIONS, IT WILL BE TIME ENOUGH TO CONSIDER ANY SUCH PROBLEMS WHEN THEY ARISE.'"

AND I SAY THEY HAVE NOW ARISEN. WE ARE HERE. BASED UPON THE RULE, WE ARE ENTITLED TO INTRODUCE EXPERT TESTIMONY TO SHOW THAT THE PERFORMANCES BEING CHALLENGED HEREIN IN THIS DISCIPLINARY PROCEEDING -- THESE ARE NOT THOSE THAT - WHICH I QUOTE FROM LA RUE - "PARTAKE OF GROSS SEXUALITY" BUT ARE MORE, SAY, A PARTAKING OF COMMUNICATION PROTECTED BY THE FIRST -- AMENDMENT NO. 1, AND, AS I SAID PREVIOUSLY, THEY ARE NOT THE BACCHANALIAN REVELRIES REFERRED TO IN LA RUE BUT ARE CLOSELY ALLIED IN KIND TO THE BALLET HE REFERRED TO THAT WAS PROTECTED AND THIS IS AN APPLICATION OF THOSE RULES. IT'S A NEW BALL GAME, AND THAT'S IT.

MS. JAFFE: WELL, COUNSEL'S INTERPRETATION OF LA RUE I WILL ADMIT IS DIFFERENT FROM MY INTERPRETATION, AND I QUOTE FROM THE OPINION: "THE STATE REGULATIONS HERE CHALLENGED COME TO US NOT IN THE CONTEXT OF CENSORING A DRAMATIC PERFORMANCE IN A THEATER, BUT RATHER IN A CONTEXT OF LICENSING BARS AND NIGHT-CLUBS TO SELL LIQUOR BY THE DRINK." AND THE OPINION GOES TO THE -- WILL BE RIGHT ON THAT POINT.

HOWEVER, WHAT I WANT TO EMPHASIZE, IF I CAN GET TO THE RIGHT PLACE IN MY NOTES, IS A PORTION OF THE LA RUE DECISION, "THE DEPARTMENT'S CHOICE OF A PROPHYLACTIC SOLUTION INSTEAD OF ONE WHICH WOULD HAVE REQUIRED ITS OWN PERSONNEL TO JUDGE INDIVIDUAL INSTANCES OF INEBRIATION CANNOT, THEREFORE, BE DEEMED AN UNREASONABLE ONE UNDER THE HOLDINGS OF OUR PRIOR CASES."

CONSIDERING THAT IN THE WHOLE CONTEXT OF THE DECISION, IT IS MY OPINION THAT THE COURT MEANT TO SAY THAT THE STATE OF CALIFORNIA IS CONSTITUTIONALLY EMPOWERED TO TAKE PREVENTIVE MEASURES AGAINST CONDUCT, SUCH AS WHAT IS DESCRIBED IN THE ACCUSATION, FROM OCCURRING ON LICENSED PREMISES AND VERY DEFINITELY SETS FORTH THE DISTINCTION BETWEEN THEATERS AND LICENSED PREMISES.

FURTHERMORE, AS I READ LA RUE, THE COURT IS RECOGNIZING THE POWER IN THE STATE OF CALIFORNIA TO ENACT PREVENTIVE MEASURES. THE RULES WERE ENACTED ON THE BASIS OF CERTAIN TESTIMONY TAKEN IN THE RULES HEARINGS, AND IN THOSE CASES, THE QUALIFIED PERSONS IN LAW ENFORCEMENT DID TESTIFY RELATING TO THE PROBLEMS RESULTING FROM THIS TYPE OF ENTERTAINMENT IN THIS SPECIAL CIRCUMSTANCE, THAT IS, LICENSED PREMISES WHERE THERE'S THE SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES.

SO, THEREFORE, I SUBMIT THAT THE RULES HAVE BEEN HELD CONSTITUTIONAL. THE RULES DO NOT REQUIRE FOR A VIOLATION THEREOF ANY EXPERT TESTIMONY. THE RULES REQUIRE FOR A VIOLATION THEREOF ONLY THE MERE EXPOSURE OF THE DESIGNATED PARTS OF THE ANATOMY ALLEGED IN THE RULES.

THEREFORE, EXPERT TESTIMONY RELATING TO THE THEATER IS IMMATERIAL ON THE BASIS IT'S DISTINGUISHABLE FROM THE PUBLIC PREMISES AND IS FURTHER IMMATERIAL BECAUSE THE VIOLATIONS OF THE LAWS DO NOT REQUIRE SUCH TO OCCUR BEFORE THE INFRACTIONS OCCURRED.

SUBMITTED.

MR. HERTZBERG: WELL, ALL I'VE GOT TO SAY --

THE HEARING OFFICER: MAY I SEE A COPY OF LA RUE? I'VE

READ IT, BUT NOT --

MR. HERTZBERG: JUST LET ME MAKE THIS COMMENT. I THINK COUNSEL TOTALLY FAILS TO EITHER ONE, COMPREHEND; TWO, UNDERSTAND; OR, THREE, IS OVERLOOKING --

MS. JAFFE: AT THIS POINT, I OBJECT TO COUNSEL'S STATEMENTS.

MR. HERTZBERG: YOU WANT TO MOVE TO STRIKE THEM?

MS. JAFFE: AND I SO MOVE.

MR. HERTZBERG: WELL, AT ANY RATE --

MS. JAFFE: WAIT A MINUTE. I'D LIKE TO HAVE A RULING ON MY MOTION.

THE HEARING OFFICER: I BELIEVE THERE IS PROBABLY A LEGITIMATE ARGUMENT. I DON'T THINK YOU'LL FIND MANY COUNSEL AGREEING WITH THE OTHER SIDE.

MS. JAFFE: YES, HOWEVER, IT'S HOW FAR THEY ARE PERMITTED TO GO IN THEIR DISAGREEMENT AS TO REMARKS.

THE HEARING OFFICER: I DON'T SEE ANYTHING PERSONAL IN IT. HE SAYS HE DOESN'T AGREE WITH YOU.

MS. JAFFE: NOW, HAD HE SAID THAT, PERHAPS I WOULDN'T HAVE MADE THE MOTION TO STRIKE.

MR. HERTZBERG: WELL, LET ME -- IT'S JUST -- I CAN'T SEEM TO GET ONE THING ACROSS, AND THAT IS THIS, SIMPLY THIS, THAT THERE ARE TWO WAYS OF CHALLENGING CONSTITUTIONALITY OF ANY LAW OR ORDINANCE OR RULE.

ONE IS ON ITS FACE AND THE OTHER IS HOW IT'S ACTUALLY APPLIED IN THIS CASE. GOING BACK TO 1897, IN A VERY FAMOUS CASE OF YICK WO VERSUS HOPKINS, THE CITY OF SAN FRANCISCO HAD AN ORDINANCE WHICH SAID THAT YOU COULD NOT BUILD A LAUNDRY IN A WOODEN BUILDING. OUT OF TWO HUNDRED AND [illegible]

THAT APPLIED THAT WERE CAUCASIANS, EVERY ONE OF THEM GOT A LICENSE. OUT OF ONE HUNDRED EIGHTY-FIVE THAT WERE CHINESE, NOT ONE OF THEM GOT A LICENSE.

NOW, THAT ORDINANCE WAS PERFECTLY VALID ON ITS FACE, LIKE THE LA RUE CASE. THE ONLY DIFFERENCE, THEY WERE APPLYING IT UNCONSTITUTIONALLY. THEY WERE ONLY GIVING THEM TO WHITE PEOPLE, NOT TO CHINESE PEOPLE.

IN THIS CASE, I INTEND TO SHOW BY EXPERT TESTIMONY THAT THIS IS BEING UNCONSTITUTIONALLY APPLIED, NO DIFFERENT THAN I DID IN THE PREVIOUS HEARING IN THIS CASE IN THIS VERY ROOM, MISS JAFFE, AND IF YOU WANT TO OBJECT TO IT, I'LL DO IT BY OFFER OF PROOF, AND I'LL SIT HERE FOR AN HOUR AND GO THROUGH EVERYTHING SHE'S GOING TO TESTIFY TO.

MS. JAFFE: MR. HEARING OFFICER, MAY I REPLY TO COUNSEL'S LAST COMMENT, AND I'LL TRY TO BE BRIEF.

AS THE HEARING OFFICER WELL KNOWS, THERE ARE NO ALLEGATIONS IN THE ACCUSATION AS TO THE RACES OF ANY OF THE DANCERS.

FURTHERMORE, AS TO THE UNCONSTITUTIONAL APPLICATION OF THE RULE, AS THE RECORD STANDS NOW, IT SHOWS FROM A PERIOD OF TIME OF -- WELL, LET ME BE SPECIFIC -- NOVEMBER THE 1ST, 1973, TO FEBRUARY THE 23RD, 1974, AND FURTHER BEYOND THAT DATE -- WELL, STRIKE THAT. TO THAT PERIOD OF TIME, RESPONDENT LICENSEE WAS THE ONLY LICENSEE WITHIN THE CITY OF SAN DIEGO, WHICH IS ONE OF THE LARGEST CITIES IN CALIFORNIA, THAT OFFERED NUDE ENTERTAINMENT; SO, THEREFORE, I SUBMIT THAT THIS TESTIMONY CANNOT PROVE THE UNEQUAL ENFORCEMENT OF THE LAW ON THAT BASIS.

MR. HERTZBERG: YOU HAVEN'T HEARD THE TESTIMONY.

MS. JAFFE: WELL, I'D HEARD HIS OFFER OF PROOF, MR. HEARING OFFICER.

MR. HERTZBERG: YOUR HONOR, I HAVE NOT MADE AN OFFER OF PROOF, BUT DEPENDING UPON YOUR RULING, IF I HAVE TO, I'LL GO THROUGH EVERYTHING PERSONALLY THAT THIS LADY IS GOING TO TESTIFY TO, BECAUSE I HAVE GOT IT ALL LINED UP.

MS. JAFFE: SO DO I, COUNSELLOR. I'M SORRY. I APOLOGIZE. I'LL SUBMIT IT TO A RULING.

THE HEARING OFFICER: FIRST, I'D LIKE TO RE-READ A COUPLE OF PERTINENT PROVISIONS OF LA RUE.

I'VE READ. ANY MORE ARGUMENT ON THIS?

MR. HERTZBERG: I'LL SUBMIT IT.

THE HEARING OFFICER: IF I UNDERSTAND LA RUE, AS I UNDERSTAND READING FROM THIS OPINION, THE SUBSTANCE -- IS THIS YOUR UNDERLINING?

MS. JAFFE: WHAT PAGE IS THAT?

THE HEARING OFFICER: PAGE 9.

MR. HERTZBERG: I HAD DONE IT FOR MY BENEFIT.

MS. JAFFE: PERHAPS YOU WOULD LIKE TO SEE MY COPY WITH MY UNDERLINING.

THE HEARING OFFICER: "THE SUBSTANCE OF THE REGULATIONS STRUCK DOWN PROHIBIT LICENSED BARS AND NIGHTCLUBS FROM DISPLAYING EITHER A FORM OF MOVIES OR LIVE ENTERTAINMENT 'PERFORMANCES' WHICH PARTAKE MORE OF GROSS SEXUALITY THAN OF COMMUNICATIONS."

ALL RIGHT. NOW, I THINK THIS IS THE PURPOSE OF THE REGULATIONS, IS IT NOT? ARE WE ALL AGREED ON THAT?

MS. JAFFE: HOWEVER, EMPHASIS SHOULD BE ON LIVE ENTERTAINMENT.

OFFICE OF
ADMINISTRATIVE HEARINGS

Compl.
Resp. EXHIBIT D

AGENCY

FILE NO.

DATE 5/11/76

OAH 41

THE HEARING OFFICER: WELL, WHAT I WAS GETTING AT, SEEMS TO ME, "PARTAKING MORE OF GROSS SEXUALITY THAN OF COMMUNICATION," HOW ARE WE GOING TO DETERMINE WHICH IT IS?

MR. HERTZBERG: I HAVE AN EXPERT TO DO THAT.

THE HEARING OFFICER: THAT'S WHAT IT'S GETTING DOWN TO.

MS. JAFFE: MAY I DIRECT THE HEARING OFFICER'S ATTENTION TO --

THE HEARING OFFICER: LET ME CONTINUE JUST ONE MOMENT, AND YOU MAY ARGUE AGAIN.

GETTING DOWN TO THIS OFT QUOTED PHRASE OF MR. HERTZBERG'S, "WERE THEY TO INSIST --" "WE WOULD POORLY SERVE BOTH THE INTERESTS FOR WHICH THE STATE MAY VALIDLY SEEK VINDICATION AND THE INTERESTS PROTECTED BY THE FIRST AND FOURTEENTH AMENDMENTS WERE WE TO INSIST THAT THE SORT OF BACCHANALIAN REVELRIES, WHICH THE DEPARTMENT SOUGHT TO PREVENT BY THESE REGULATIONS, WERE THE CONSTITUTIONAL EQUIVALENT OF A PERFORMANCE BY A SCANTILY-CLAD BALLET TROUPE IN A THEATER.

"THE DEPARTMENT'S CONCLUSION, EMBODIED IN THESE REGULATIONS, THAT CERTAIN SEXUAL PERFORMANCES AND THE DISPENSATION OF LIQUOR BY THE DRINK OUGHT NOT TO OCCUR SIMULTANEOUSLY AT THE PREMISES --"

NOW, IT IS YOUR POSITION OR THE DEPARTMENT'S POSITION: THAT A VIOLATION OF THESE REGULATIONS ARE, PER SE, SEXUAL PERFORMANCES?

MS. JAFFE: IT IS THE --

THE HEARING OFFICER: GROSS SEXUALITY?

MS. JAFFE: IT IS THE DEPARTMENT'S POSITION THAT LA RUE AUTHORIZES THE DEPARTMENT TO TAKE -- I'M LOOKING NOW AT PAGE --

THE FIRST PARAGRAPH, APPROXIMATELY THE FIFTEENTH LINE DOWN, "THE DEPARTMENT'S CHOICE OF A PROPHYLACTIC SOLUTION INSTEAD OF ONE" --

THE HEARING OFFICER: GO AHEAD.

MS. JAFFE: -- "WHICH WOULD HAVE REQUIRED ITS OWN PERSONNEL TO JUDGE INSTANCES OF INEBRIATION CANNOT THEREFORE BE DEEMED AN UNREASONABLE ONE UNDER THE HOLDINGS OF OUR PRIOR CASES."

NOW, IN MY OPINION, THE UNITED STATES SUPREME COURT IN LA RUE IS TELLING THE DEPARTMENT YOU DON'T HAVE TO HAVE THE SEXUAL CONDUCT THAT WAS ADDUCED AT THE RULES HEARING PRIOR TO THE ENACTMENT OF RULE 143 IN ORDER TO SUBJECT THE LICENSEE TO SUSPENSION OR REVOCATION.

IT IS SUFFICIENT THAT -- AND AUTHORIZED FOR THE DEPARTMENT TO, IN EFFECT, USE THESE RULES AS A PREVENTIVE BASIS FOR PREVENTING VIOLATIONS OF PENAL CODE SECTION 647 (A), 286 (A) AND WHAT HAVE YOU, FROM OCCURRING ON LICENSED PREMISES, AND IT IS PUTTING ITS STAMP OF APPROVAL, IN MY OPINION, ON THE RULES AS A PREVENTIVE DEVICE.

THE HEARING OFFICER: LA RUE SAYS THAT -- WHAT'S THE RULE INVOLVED?

MS. JAFFE: 143.3, I BELIEVE. YES, 143.3, SUB 1, SUB C, SUB B.

THE HEARING OFFICER: 143 --

MS. JAFFE: .3, SUB 1 AND ITS SUBPARAGRAPHS AND SUBPARAGRAPH 2. NOW --

MR. HERTZBERG: I CAN ANSWER --

MS. JAFFE: I HAVEN'T COMPLETED MY STATEMENT YET. THE HEARING OFFICER INQUIRED OF THE DEPARTMENT'S POSITION.

THE DEPARTMENT'S POSITION IS, IN MY OPINION, THAT THE ACTS AND CONDUCT PRESCRIBED BY THIS SECTION WHICH WERE HELD VALID BY THE UNITED STATES SUPREME COURT ARE SUCH THAT IT DEEMS THESE ACTS TO BE CONTRARY TO PUBLIC WELFARE AND MORALS, IN EFFECT, PER SE, AND ALSO THAT THE LA RUE DECISION AUTHORIZED THE DEPARTMENT TO TAKE PREVENTIVE MEASURES BY ENFORCING THESE RULES, NOTWITHSTANDING AND NOT REGARDING WHETHER OR NOT THERE IS GROSS SEXUALITY AND/OR EXTREME VIOLATIONS OF VARIOUS PROVISIONS IN THE PENAL CODE.

MR. HERTZBERG: I WOULD SAY THAT IS ONE HUNDRED PERCENT EXACTLY WHAT LA RUE DOES NOT STAND FOR. I COULD STATE THAT IN THIS WAY, YOUR HONOR.

IN LA RUE, THE REALLY SERIOUS QUESTION WAS WHETHER THE TWENTY-FIRST AMENDMENT AND RIGHTS OF THE STATES TO CONTROL THE SALE AND USE OF ALCOHOL HAD WITHIN IT THE RIGHT TO -- COMPELLING RIGHT OVER THE FIRST AMENDMENT RIGHTS OF FREEDOM OF EXPRESSION, AND ALL THE JUSTICES SEEMED TO AGREE TO ONE THING, THAT MANY OF THE ACTS CONDUCTED IN LA RUE WERE BAD, BUT THEY ALSO AGREED THAT THERE WERE ACTS WHICH WOULD BE COVERED BY THE RULES WHICH WERE CONSTITUTIONALLY PROTECTED. SO THEY SAID, IN EFFECT, WE'LL SAY THAT THE RULES ARE VALID, AND WHEN YOU COME TO US WITH CONSTITUTIONALLY-PROTECTED FREEDOM OF EXPRESSION, WE'LL TAKE THEM ONE BY ONE AS THEY COME UP.

THEY DIDN'T SAY THAT ALL CONDUCT COVERED BY THESE RULES WAS NOT CONSTITUTIONALLY PROTECTED. THAT'S THE REASON THEY SAID THERE IN THE FOOTNOTE AT THE END: WE GIVE THE SAME ADMONITION AS WE DID IN HOSTETTER. WE SAY THAT FOR THIS PURPOSE: THE STATE HAS A RIGHT TO REGULATE, BUT THERE ARE GOING TO BE

EXCEPTIONS AS THEY COME, AND THIS DOES COVER GROSS SEXUALITY. THIS DOES COVER THE TYPE OF BACCHANALIAN REVELRIES THAT THE EVIDENCE IN LA RUE DID SHOW.

NOW, WHEN SHE'S TALKING ABOUT THE PROPHYLACTIC TREATMENTS, THIS YOU'VE GOT TO REALLY -- TO UNDERSTAND, YOU'VE GOT TO READ THE BRIEFS IN THE CASE TO UNDERSTAND WHAT THE ARGUMENTS MEANT THAT WERE MADE, BECAUSE THAT WAS AN ANSWER TO AN ARGUMENT, AND IN THE LA RUE CASE, IT WAS ARGUED BY THE APPELLANT, FOR THAT IS BY THE APPELLEE, THAT THE FIRST AMENDMENT ACTIVITY WAS A HIGHER RIGHT THAN THE TWENTY-FIRST AMENDMENT, AND THE APPELLANT CONTENDED THAT THE ADDED ELEMENT OF ALCOHOL IN THE BLOODSTREAM OF THE CUSTOMER IS THE IMPORTANT STATE INTEREST WHICH PERMITS A CURTAILMENT OF THE FIRST AMENDMENT RIGHTS, THAT IS, THE FACT THAT YOU WERE DRINKING WHISKEY, BY DRINKING IN THE BARROOM, GAVE THE STATE A FURTHER RIGHT TO CONTROL FIRST-AMENDMENT RIGHTS THAN IT ORDINARILY WOULD IF THERE WAS NO WHISKEY INVOLVED, AND, AS A MATTER OF FACT, AT THAT POINT OF ORAL ARGUMENT, IT WAS ASKED, "DON'T YOU THINK THAT THE STATE OF CALIFORNIA COULD CONTROL THE SALE OF WHISKEY IF IT WAS SOLD AT A GAS STATION AND CONTROL THE SALE OF GAS IN A GAS STATION? COULD YOU CONSTITUTIONALLY PROHIBIT THE RIGHT TO SELL WHISKEY IN A GAS STATION?" AND THE ANSWER WAS, "YES, THEY COULD IF YOU ARE GOING TO BUY IT AND SOUND LIKE YOU ARE GOING TO GO OUT AND DRIVE."

IT WAS ALSO ASKED AT THAT TIME, "DOES THE STATE OF CALIFORNIA HAVE A LAW THAT SAYS YOU CAN'T SELL WHISKEY NEAR A CHURCH?" AND HE WAS GIVEN THE ANSWER THAT THERE IS A LAW IN CALIFORNIA THAT SAYS YOU CAN'T SELL WHISKEY NEAR A CHURCH THAT'S

WITHIN FIVE HUNDRED YARDS.

AND THEN HE ASKED THE THIRD QUESTION. I THINK THIS WILL ENLIGHTEN THE PROPHYLACTIC TREATMENT THAT YOU ARE TALKING ABOUT. THIRD QUESTION WAS, "COULDN'T CALIFORNIA CONSTITUTIONALLY PASS A LAW THAT SAID YOU COULDN'T SELL WHISKEY IN A BOOK STORE?' AND THE ANSWER WAS, "ABSOLUTELY NOT." AND HE SAID, "WHY?" AND HE SAID, "WELL, THE REASON YOU CAN'T DO THAT IS BECAUSE THE DAY YOU TELL ME THAT I CAN'T SELL WHISKEY IN A BOOK STORE IS THE DAY WE'VE GOT TO TELL YOU THAT YOU CAN'T READ A BOOK IN A BARROOM."

NOW, WHAT THEY ARE REALLY TALKING ABOUT HERE IN LA RUE IS THIS: YOU JUST CAN'T READ ONE SECTION OF IT. YOU'VE GOT TO READ THE WHOLE THING TOGETHER. THEY SAID THAT THESE RULES WERE CONSTITUTIONALLY VALID TO PROHIBIT THE KIND OF CONDUCT WHICH THE EVIDENCE IN LA RUE SHOWED WAS HAPPENING IN BARS AT THAT TIME, AND IF YOU WILL READ THE APPENDIX, YOU'LL SEE THAT THE KIND OF THINGS THEY WERE DOING COULD MAKE YOU VOMIT. THEY SAID, HOWEVER, THAT THERE IS SOME CONSTITUTIONALLY-PROTECTED CONDUCT WHICH THESE RULES COULD PROHIBIT ON THEIR FACE, BUT WHICH THEY WERE APPLIED TO THAT CONDUCT, WE'LL FACE THAT WHEN IT GETS HERE, AND WE'LL WRITE THAT OUT, AND I SEE THAT WE'RE HERE NOW. I SEE THIS: THAT THIS CONDUCT WE'RE TALKING ABOUT TODAY IS NOT THE KIND OF CONDUCT THAT WAS INTENDED TO BE COVERED BY LA RUE, AND COUNSEL'S READING OF LA RUE IS DIAMETRICALLY OPPOSITE OF THAT WHICH IT WAS INTENDED TO DO, AND THE PURPOSE OF ELICITING THE TESTIMONY IS TO SHOW THAT THE DANCES THAT TAKE PLACE AT THE BODY SHOP ARE ONLY DIFFERENT IN ONE ASPECT THAN THE BALLETS THAT TAKE PLACE IN SOME OF THE

FINEST THEATERS IN CALIFORNIA, AND THAT DIFFERENCE IS THE TASTE OF THE INDIVIDUAL, THAT THE ACTIONS ARE NO DIFFERENT.

THE NUDITY IS NO DIFFERENT. THE MOTIONS ARE NO DIFFERENT. MAYBE THE DANCERS ARE MORE TALENTED AND MAYBE THE PROPS ARE BETTER AND MAYBE THE PEOPLE ARE DRESSED BETTER, BUT WHAT WE WANT TO SHOW IN THIS CASE IS NOT EVERYBODY LIKES TO GET DRESSED UP IN A TUXEDO. SOME PEOPLE WOULD RATHER GO TO A PLACE WITH SAWDUST ON THE FLOOR AND SEE SOMETHING NO DIFFERENT THAN THEY WOULD SEE IN THE FINEST THEATER, AND PAY LESS.

MS. JAFFE: NOW, COUNSEL HAS ENLIGHTENED US AS TO THE ARGUMENTS WHICH WERE INTRODUCED BEFORE THE UNITED STATES SUPREME COURT. HOWEVER, I SUBMIT THAT IT IS IN THE INTEREST OF ALL PARTIES TO THIS TO DISREGARD THE ARGUMENTS AND STICK WITH WHAT THE COURT ULTIMATELY RESOLVED.

NOW, THERE IS NOTHING IN THE RULES THAT THE COURT ACCEPTED AS VALID THAT SAYS THIS APPLIES ONLY TO A BAR WITH A CERTAIN ECONOMIC LEVEL OR WHETHER OR NOT THERE IS SAWDUST ON THE FLOOR.

ON THE CONTRARY, THE UNITED STATES SUPREME COURT WAS AUTHORIZING THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL TO APPLY THIS STANDARD UNIFORMLY THROUGHOUT THE STATE, AND THIS IS WHAT WE'RE ATTEMPTING TO DO, AND, FURTHERMORE, WHEN THE UNITED STATES SUPREME COURT GAVE ITS STAMP OF VALIDITY AGAINST FOURTEENTH AND -- FIRST AND FOURTEENTH AMENDMENT OBJECTIONS TO RULE 143, THIS WAS THE LANGUAGE, "THAT THESE ACTS AND THIS CONDUCT" -- IN RULE 143.3 -- "SHALL BE DEEMED CONTRARY TO PUBLIC WELFARE AND MORALS."

HENCE, THE DEPARTMENT'S POSITION THAT I'VE PREVIOUSLY

STATED. THANK YOU. SUBMITTED.

THE HEARING OFFICER: WHERE IS THAT LAST STATEMENT OF YOURS?

MS. JAFFE: IT'S IN THE FIRST PARAGRAPH IN 143.3.

THE HEARING OFFICER: YOU ARE TALKING ABOUT THE RULE?

MS. JAFFE: YES.

THE HEARING OFFICER: YOU STATED YOU HAD AN OFFER OF PROOF. COULD YOU REDUCE THAT TO WRITING?

MR. HERTZBERG: WELL, I CERTAINLY COULD. I'M PREPARED TO PUT IT IN THE RECORD AT THIS TIME. YOU WANT TO RULE ON THE OBJECTION?

THE HEARING OFFICER: I WAS THINKING OF SUSTAINING THE OBJECTION AT THIS TIME SUBJECT TO RENEWAL OF YOUR OFFER. I REALIZE YOU HAVE YOUR WITNESS HERE FROM OUT OF TOWN.

MR. HERTZBERG: THE PROBLEM IS THAT SHE'S COME FROM OUT OF TOWN AT A GOOD DEAL OF EXPENSE. IF YOU WOULD -- WHY DON'T WE LET HER TESTIFY AND THEN WE'LL SUBMIT POINTS AND AUTHORITIES AND RESERVE OBJECTIONS AS LONG AS SHE'S HERE.

MS. JAFFE: I WOULD OBJECT TO THAT.

MR. HERTZBERG: I KNOW YOU OBJECT TO IT. THERE'S NO QUESTION ABOUT THAT.

THE HEARING OFFICER: I WAS TRYING TO FIND SOME AUTHORITY TO RULE.

MS. JAFFE: THERE IS ANOTHER ALTERNATIVE WHICH I'M RELUCTANT TO MENTION; HOWEVER, I WILL DO SO, AND THAT IS I BELIEVE COUNSEL IS IN POSSESSION OF A TRANSCRIPT OF -- IS IT MISS CHASE'S TESTIMONY?

MR. HERTZBERG: YES, BUT IT'S NOT GOING TO BE IDENTICAL TO

THAT.

MS. JAFFE: SO IT'S NOT --

MR. HERTZBERG: IT'S GOING TO BE BROUGHT UP TO INDICATE --

MS. JAFFE: WELL, I WOULD OBJECT TO THE TAKING OF THE TESTIMONY, FIRST, SUBJECT TO --

MR. HERTZBERG: I FAIL TO COMPREHEND HOW HER TESTIMONY IS NOT MOST MATERIAL IN THIS PROCEEDING. I JUST DON'T UNDERSTAND IT. I FEEL IT'S -- CERTAINLY, IF THEY SOLD LIQUOR AT THE AHMANSON THEATER, WHICH THEY DO AT THE AFRICAN BALLET, AND THEY ATTEMPTED TO TAKE THEIR LICENSE AWAY, THAT THEY COULDN'T SHOW THAT THIS WAS A BALLET WITHIN THE CONSTITUTIONAL PROTECTION. AND LA RUE, READ ANY OTHER WAY, JUST DOESN'T MAKE ANY SENSE.

THE QUESTION IS IS THIS A GROSS EXHIBITION OR PARTAKES OF GROSS SEXUALITY AS OPPOSED TO COMMUNICATION. AND I'VE -- I'VE GOT A WITNESS HERE, AN EXPERT, WHO HAS BEEN A PROFESSOR IN THE FIELD OF ARTS AND WILL TESTIFY AS TO THE DIFFERENCE BETWEEN THE TWO AND WHY THIS ONE PARTAKES IN A CERTAIN COMMUNICATION AS OPPOSED TO WHAT GROSS SEXUALITY IS AND WHAT A BACCHANALIAN REVELRY IS, WHAT IT MEANS.

SHE WILL DEFINE IT, WHERE IT CAME FROM, FROM THE GREEKS, AND I'M PREPARED TO MAKE MY OFFER OF PROOF RIGHT NOW, AND I'LL SIT HERE AND READ IT INTO THE RECORD.

MS. JAFFE: WELL, MAY I BE HEARD BRIEFLY?

THE HEARING OFFICER: YOU MAY.

MS. JAFFE: THANK YOU, MR. HEARING OFFICER. I DON'T THINK THAT COUNSEL'S REMARKS RELATIVE TO THE AHMANSON APPLY IN THIS PROCEEDING. I THINK THERE IS A SUBSTANTIAL DIFFERENCE BETWEEN A TAVERN AND NIGHTCLUB AND WHAT THE RECORD SHOWS IS BEFORE US

NOW, AND, ALSO, HE MENTIONED -- WHAT WAS IT, AFRICAN BALLET, DID YOU MENTION JUST NOW?

MR. HERTZBERG: YES.

MS. JAFFE: I THINK THAT THE PERFORMANCES THERE MIGHT BE SUBSTANTIALLY DIFFERENT, AND I HAVE NEVER BEEN TO THE AHMANSON WHERE I OBSERVED THE AUDIENCE WATCHING THE PERFORMANCE AND CONSUMING ALCOHOLIC BEVERAGES AND WHAT HAVE YOU CONCURRENTLY.

IT'S A CONSECUTIVE SITUATION, AND THERE ARE NUMEROUS OTHER DISTINCTIONS WHICH I COULD DRAW, WHICH I'M NOT GOING TO DO.

BUT I FEEL THAT THE EXPERT TESTIMONY ON THE DEFINITION OF THE REVELRIES MENTIONED IN THE UNITED STATES SUPREME COURT IS NOT SUBJECTABLE TO EXPERT TESTIMONY INSOFAR AS THIS IS SOMETHING WITHIN THE KNOWLEDGE OF MOST PEOPLE AND ALSO SUBJECT TO DEFINITION BY EVERY ACCEPTED MEANS, SO I DON'T FEEL THAT RESPONDENT IS IN AN AREA WHERE HE, IN FACT, REQUIRES AN EXPERT IF HE'S OFFERING HER TESTIMONY AS TO DEFINE WORDS USED IN THE UNITED STATES SUPREME COURT DECISION.

ON THE CONTRARY, I WOULD SUBMIT THAT INTERPRETATION OF THE JUDICIAL OPINION IS NOT WITHIN THE REALM OF A WITNESS WHO MIGHT POSSIBLY BE WELL VERSED AND EDUCATED IN THE FIELD OF THEATER AND/OR DANCE.

SUBMITTED.

MR. HERTZBERG: I THINK COUNSEL HAS JUST PROVED OUR POINT WHEN SHE MAKES A STATEMENT AS AN ATTORNEY AT LAW THAT SHE PERSONALLY FEELS THAT THERE IS A DIFFERENCE BETWEEN THE AFRICAN BALLET AT THE AHMANSON THEATER AND WHAT WE SIT WITH RIGHT HERE AND PROBABLY HAS VERY LITTLE KNOWLEDGE OF WHAT A BALLET IS.

WE HAVE HERE --

MS. JAFFE: AGAIN, I OBJECT.

MR. HERTZBERG: WE HAVE HERE SOMEBODY WHO IS AN EXPERT IN THE FIELD WHO WILL TESTIFY AS TO WHETHER IT'S DIFFERENT OR NOT.

NOW, THE FACT THAT IT'S MATERIAL THAT IT BE DIFFERENT MAKES IT EQUALLY SO MATERIAL THAT WE PRODUCE SOMEBODY WHO KNOWS WHAT THEY'RE TALKING ABOUT TO TESTIFY WHETHER IT IS IN FACT DIFFERENT. AND YOU PROVED OUR OWN POINT BY MAKING THAT STATEMENT, COUNSEL.

I'LL SUBMIT IT AND THEN I'LL JUST TAKE WHAT --

MS. JAFFE: BEFORE I WILL SUBMIT IT, I WILL SUBMIT TO THE HEARING OFFICER THAT WE HAVE TO CONSIDER NOT THE FACTS RAISED BY COUNSEL IN HIS ARGUMENTS OR OFFERS OF PROOF. WE HAVE TO CONSIDER THE FACTS THAT ARE ON THE RECORD HERE IN THIS PARTICULAR INSTANCE.

COUNSEL HAS SEVERAL TIMES IN THIS PROCEEDING MADE MENTION OF THE FACT "WE ARE HERE". AND HE IS REFERRING TO HIS CLIENT IN HIS PUBLIC PREMISES, HIS LICENSED NIGHTCLUB, HIS LICENSED ESTABLISHMENT.

WE MUST CONSIDER IT. WE CANNOT CONSIDER AT THIS TIME THE AHMANSON, THE AFRICAN BALLET, OR ANY SUCH REMOVED AND REMOTE SITUATION.

WE HAVE TO DETERMINE WHETHER OR NOT THIS PARTICULAR RESPONDENT ON THE SPECIFIC DATES ALLEGED WITH THE PERSONS ALLEGED DID IN TRUTH AND IN FACT COMMIT THESE VIOLATIONS.

I FEEL THAT THIS IS THE ISSUE, AND NOW I WILL SUBMIT TO RULING.

THE HEARING OFFICER: YOUR POSITION IS WHETHER THERE WAS A

VIOLATION. MR. HERTZBERG'S POSITION IS, IN EFFECT, ASSUMING THESE ACTS TOOK PLACE AS PLEADED, THAT LA RUE DOESN'T COVER IT, AND, IN EFFECT, UNDER LA RUE - BY THE TERMS AS YOU SAY - THESE ARE NOT A BACCHANALIAN REVELRY AS COMPARED TO A BALLET. SO IF THAT IS HIS POSITION, I MIGHT NOT BE ABLE TO SUSTAIN IT, BUT HE'S ASKING FOR THE OPPORTUNITY TO PRESENT EVIDENCE ON IT, BASICALLY. IS THAT CORRECT, MR. HERTZBERG?

MR. HERTZBERG: RIGHT. I SAY IT'S ONE OR THE OTHER. EITHER LA RUE DOESN'T COVER IT OR LA RUE IS UNCONSTITUTIONAL BECAUSE IT APPLIES TO ALL BALLETS, AND I'VE GOT TO HAVE A RIGHT TO ESTABLISH THAT, AND I'M CERTAINLY ENTITLED TO DO IT.

MAYBE THEY WON'T MAKE A FINDING IN MY FAVOR, BUT I'M ENTITLED TO INTRODUCE THIS EVIDENCE. THAT'S ONE THING.

MS. JAFFE: NOW, I WILL REPLY TO THE LATEST ARGUMENT BY MR. HERTZBERG, BUT I'LL REPLY BRIEFLY BY REFERRING TO THE DEPARTMENT'S POSITION AS TO THE LANGUAGE OF THE RULINGS THEMSELVES MAKING CERTAIN CONDUCT CONTRARY TO PUBLIC WELFARE AND MORALS AND ALSO THAT THERE IS A DISTINCTION DRAWN IN LA RUE BETWEEN BALLET, AND THIS RECORD SHOWS THAT THIS IS NOT TRUE, THAT WE'RE DEALING WITH ANOTHER SITUATION.

SUBMITTED.

THE HEARING OFFICER: AS YOU SAY, THE CONDUCT IS SLIGHTLY CONTRARY TO THE RULES, AND YOU ARE, IN EFFECT -- TO RULE 143, AND YOU ARE ATTEMPTING TO SHOW THAT, IN EFFECT, UNDER LA RUE, IT'S -- UNDER LA RUE, AS YOU UNDERSTAND THESE FACTS, IT WOULD BE AN UNCONSTITUTIONAL ABRIDGEMENT?

MR. HERTZBERG: APPLICATION, RIGHT.

THE HEARING OFFICER: THAT THE RULE ITSELF MIGHT BE VALID,

AS YOU SAID, BUT UNDER THIS PARTICULAR STATE OF FACTS --

MR. HERTZBERG: AS APPLIED HEREIN, THE RULE IS UNCONSTITUTIONAL, OR IT DOESN'T APPLY, ONE OR THE OTHER. IT'S EITHER ALTERNATIVE. THE EVIDENCE -- WE'LL ARGUE THE EVIDENCE LATER BY THE ARGUMENT, BUT AS FAR AS INTRODUCING THE EVIDENCE AT THIS TIME, I'M ENTITLED TO SHOW, NO. 1, LA RUE NEVER INTENDED TO APPLY TO THIS KIND OF PERFORMANCE; NO. 2, IF IT DOES APPLY TO THIS KIND OF PERFORMANCE, THEN THE RULE IS UNCONSTITUTIONAL AS APPLIED; AND, NO. 3, THAT THE RULE WAS NEVER INTENDED TO ALLAY ONE OF THOSE THREE -- WHEN WE ARGUE IN FINAL.

THE HEARING OFFICER: ALL RIGHT. I WILL PERMIT IT SUBJECT TO FINAL RULING ON IT. IS THAT ACCEPTABLE TO YOU? DO WE UNDERSTAND EACH OTHER?

MR. HERTZBERG: YES.

THE HEARING OFFICER: AND YOU UNDERSTAND THAT IS SUBJECT TO A MOTION TO STRIKE ALL THE TESTIMONY?

MS. JAFFE: ALL RIGHT. VERY WELL.

THE HEARING OFFICER: ALL RIGHT. WE WILL TAKE A FIVE-MINUTE RECESS.

(WHEREUPON A SHORT RECESS WAS TAKEN, AFTER WHICH THE FOLLOWING PROCEEDINGS WERE HAD:)

THE HEARING OFFICER: ALL RIGHT. ARE THE PARTIES READY?

MR. HERTZBERG: RESPONDENT READY, YOUR HONOR.

THE HEARING OFFICER: READY FOR THE AGENCY?

MS. JAFFE: JUST A MINUTE, PLEASE.

THANK YOU.

THE HEARING OFFICER: ALL RIGHT. LET'S PROCEED WITH THE EVIDENCE.

MR. HERTZBERG: THANK YOU.

Q NOW, MISS CHASE, YOU WERE ABOUT TO TELL US YOUR EDUCATION IN THE FIELD OF THEATER ARTS.

WOULD YOU TELL US IN CHRONOLOGICAL ORDER?

A YES, I RECEIVED MY B.A. DEGREE FROM THE UNIVERSITY OF MINNESOTA IN LITERATURE AND THEATER ARTS, MY M.A. DEGREE FROM THE UNIVERSITY OF COLORADO, AND I UNDERTOOK GRADUATE WORK AT THE UNIVERSITY -- AT CORNELL UNIVERSITY IN THE FIELD OF EUROPEAN THEATER.

Q AND HAVE YOU WORKED IN THE PAST YEAR OR SO ON YOUR DISSERTATION FOR YOUR PH.D.?

A YES, WHILE I WAS AT CORNELL, I COMPLETED ALL THE COURSE WORK FOR MY DOCTORATE AND PASSED MY DOCTORAL EXAMINATION. I HAVE YET TO FINISH THE DISSERTATION.

Q SO YOU HAVE TAKEN YOUR EXAMINATION FOR YOUR DOCTORATE?

A YES.

Q HAVE YOU EVER RECEIVED ANY SCHOLARSHIPS IN THE FIELD OF THEATER ARTS?

A YES, AS I BEGAN MY GRADUATE STUDY AT CORNELL, I RECEIVED FROM CORNELL A FOUR-YEAR GRADUATE FELLOWSHIP. I ALSO RECEIVED A FULBRIGHT SCHOLARSHIP TO STUDY FOR ONE YEAR AT THE UNIVERSITY OF ZURICH, AT WHICH TIME I STUDIED THEATER, AND SUBSEQUENTLY I RECEIVED A RESEARCH GRANT FOR RESEARCH ON MY DISSERTATION.

I SPENT A YEAR AT THE UNIVERSITY OF PARIS RESEARCHING MY DISSERTATION, ALSO IN THE FIELD OF CONTEMPORARY THEATER.

Q NOW, IN ADDITION -- WHEN YOU SAID UNIVERSITY OF PARIS, WAS THAT SORBONNE?

A SORBONNE UNIVERSITY, RIGHT.

Q AND HAVE YOU STUDIED BALLET?

A YES, I HAVE.

Q FOR HOW LONG?

A FOR A TOTAL OF APPROXIMATELY FOUR YEARS, TWO YEARS IN CALIFORNIA AT THE PACIFIC BALLET THEATER AND TWO YEARS BEFORE THAT UNDER PRIVATE TUTORS.

Q HAVE YOU EVER TAUGHT IN THE FIELD OF THEATER ARTS?

A YES.

Q TELL US WHERE YOU'VE TAUGHT, WHAT POSITIONS YOU'VE HELD?

A AT CORNELL UNIVERSITY, I TAUGHT A COURSE IN THE HISTORY OF FRENCH THEATER WHILE I WAS DOING MY GRADUATE WORK. I WAS THEN HIRED BY CAL STATE TO TEACH THEIR UPPER DIVISION MODERN THEATER COURSES. MY TITLE THERE WAS ASSISTANT PROFESSOR.

Q NOW, IN THE COURSE OF YOUR EDUCATION TEACHING IN THEATER, DID THAT INCLUDE THE DANCE?

A YES.

Q TELL US GENERALLY IN THE FIELD OF DANCE WHAT SPECIFICALLY YOU STUDIED OR SPECIFICALLY YOU TAUGHT.

A EXCUSE ME?

Q IN THE FIELD OF DANCE, WHAT KIND OF DANCE?

A I ALWAYS TAUGHT DANCE IN THE CONTEXT OF WHATEVER THEATER ARTS COURSES I WAS TEACHING. I NEVER TAUGHT A SEPARATE DANCE COURSE. I CHOREOGRAPHED DANCE IN THE COURSE OF DIRECTING VARIOUS THEATRICAL COURSES ON MY OWN.

Q OTHER THAN YOUR TEACHING EXPERIENCE AND STUDYING EXPERIENCE, DID YOU HAVE ANY PRACTICAL EXPERIENCE IN THEATER

ARTS?

A YES, ALL DURING THE TIME I WAS A GRADUATE STUDENT AND SUBSEQUENTLY, I HAVE HAD A VARIETY OF PRACTICAL EXPERIENCE IN THEATER.

FIRST OF ALL, AS AN ACTRESS, I HAVE HAD MAJOR ROLES AT THE UNIVERSITY OF COLORADO, MAJOR ROLES AT CORNELL UNIVERSITY THEATER, ALSO A LOT OF EXPERIENCE IN SUMMER STOCK AND IN COMMUNITY THEATERS.

SINCE I CAME TO CALIFORNIA, I'VE ACTED IN MAJOR ROLES IN A VARIETY OF SHORT FILMS, STUDENT FILMS. I'VE HAD MINOR ROLES IN A COUPLE OF FEATURES. I'VE ALSO PARTICIPATED IN OTHER CAPACITIES IN VARIOUS THEATRICAL AND FILM PRODUCTIONS.

I HAVE BEEN -- AT THE UNIVERSITY OF ZURICH, I WORKED UNDER FRIEDRICH DURRENMATT, WHO WAS THE LEADING SWISS PLAY-WRIGHT OF OUR TIME, D-U-R-R-E-N-M-A-T-T.

I WORKED BACKSTAGE ON LIGHTING, TECHNICAL DESIGN --

THE HEARING OFFICER: EXCUSE ME. IS SHE GOING TOO FAST?

THE WITNESS: I TEND TO.

THE HEARING OFFICER: WE HAVE TO ALLOW FOR THE REPORTER HERE. I'M SORRY. CONTINUE.

THE WITNESS: I'VE WORKED IN COSTUMING, IN MAKE-UP, IN LIGHTING. I'VE WORKED ON FILM PRODUCTION IN VARIOUS CAPACITIES.

IN ADDITION TO MY PRESENT POSITION AS ASSISTANT DIRECTOR, I'VE BEEN A PRODUCTION MANAGER. I'VE BEEN A SCRIPT SUPERVISOR. I'VE SUPERVISED SEARCHING LOCATIONS. I'VE SUPERVISED CASTING.

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BY MR. HERTZBERG:

Q HAVE YOU HAD ANY EXPERIENCE IN CHOREOGRAPHY?

A YES, IN THE CONTEXT OF WRITING AND DIRECTING MY OWN PRODUCTION FOR THEATER, I CHOREOGRAPHED DANCE.

Q IN ADDITION TO THAT, HAVE YOU EDITED ANY FILM?

A DURING THE PAST TWO YEARS, THAT'S BEEN MY MAJOR OCCUPATION.

I'VE BEEN ASSISTANT EDITOR ON TWO FEATURES. I'VE BEEN A SOUND EDITOR ON TWO MORE FEATURES.

I'VE ALSO JUST FINISHED EDITING MY OWN SIXTEEN-MILLIMETER FILM, WHICH I SHOT LAST SUMMER FOR DAN REPRODUCTIONS, WHICH IS AN EDUCATIONAL FILM COMPANY.

Q NOW, CAN YOU EXPLAIN TO US THE RELATIONSHIP OF HOW DANCE, THE DANCE, FITS INTO THEATER ARTS, IF IT DOES?

A DANCE IS, YES, ONE OF THE THEATER ARTS, AND ACCORDING TO THE EMINENT THEATER CRITICS MELNITZ AND MACGOWAN, FOR WHOM THE THEATER BUILDINGS AT U.C.L.A. WERE NAMED, DANCE IS THE FIRST ART OF THEATER.

IN THEIR HISTORY OF THE THEATER, THEY BEGAN BY DESCRIBING THE PRIMARY FUNCTION OF DANCE AS THE CENTRAL THEATER ART. FOR EXAMPLE, OUR WORD "ORCHESTRA", WHICH REFERS TO THE MAIN AUDITORIUM IN A THEATER, COMES FROM THE GREEK WORD "ORCHESTRA", WHICH MEANT DANCING PLACE. THEATER ORIGINATED AS DANCE.

GREEK THEATRICAL PERFORMERS WERE DANCERS WHO ONLY LATER, IN THE COURSE OF SUBSEQUENT CENTURIES, ADDED WORDS AND WITH DIALOGUE TO THEIR ROUTINES OF DANCES.

Q SO WHAT YOU ARE TELLING US, IN EFFECT, IS ALL THEATER

STARTED FROM DANCE?

A THE DANCE IS THE FUNDAMENTAL ART OF THEATER, BECAUSE DANCE IS MOVEMENT, AND THEATER ORIGINATED AS DANCE. ALL PRIMITIVE FORMS OF THEATER ARE DANCES.

Q WHAT ARE SOME OF THE PRIMITIVE FORMS OF DANCE?

A FOR EXAMPLE, FOR PRIMITIVE MAN, DANCE WAS SPEECH. IT WAS A FORM OF SPEECH. ANY COMMUNICATION HE HAD WITH THE GODS, HE DID THROUGH A DANCE, A RAIN DANCE, A WAR DANCE, A SUN DANCE, A FERTILITY DANCE. ALMOST ANYTHING YOU CAN THINK OF WAS EXPRESSED IN THE FORM OF A DANCE.

Q WELL, NOW, DOES -- OR DID INITIALLY DANCE COMMUNICATE ANY TYPE OF FEELING OR EMOTION FROM THE ARTIST OR DANCER TO THE AUDIENCE?

A WELL, INITIALLY, THERE WAS NO AUDIENCE. THERE WERE ONLY THE PARTICIPANTS IN THE DANCE, AND, IN THAT CASE, THE COMMUNICATION WAS FROM THE DANCERS TO THE DIETY OR FROM THE DANCERS TO EACH OTHER, A FEELING COMMUNICATED AMONG THE DANCERS, BUT, YES, DANCE HAS ALWAYS BEEN A PRINCIPAL FORM OF COMMUNICATION.

Q CAN YOU -- DEFINE DANCE FOR US, IF YOU CAN, AS KNOWN TO SOMEONE IN THE THEATER ARTS.

A DANCE IS RHYTHMIC MOTION, USUALLY, BUT NOT ALWAYS, PERFORMED WITH MUSIC, MOTION WHICH CREATES TO THE OBSERVER VISUAL DESIGNS IN SPACE. WATCHING A DANCE, YOU ARE WATCHING THE MOTION OF A HUMAN BODY IN SPACE CREATING, PRESUMABLY, BEAUTIFUL PATTERNS.

Q WELL, NOW, WHEN YOU SAY "VISUAL DESIGNS IN SPACE OR BEAUTIFUL PATTERNS", COULD A DANCE COMMUNICATE NOTHING MORE

THAN ITS ESTHETIC VALUE?

A YES, IT'S OFTEN BEEN SAID OF CLASSICAL BALLET THAT IS, IN FACT, WHAT IT COMMUNICATES, BECAUSE IT'S HIGHLY ABSTRACT. MANY CLASSICAL BALLETS COMMUNICATE JUST THAT, THAT VISIBLE AND VISUAL BEAUTY OF THE BODY IN MOTION.

Q SO WHEN WE SPEAK THEN OF THAT WHICH IS A DANCE WHICH COMMUNICATES, IT COULD COMMUNICATE BEAUTY OR CONVERSELY EVEN A STORY?

A RIGHT, IT COULD COMMUNICATE IDEAS. IT COULD COMMUNICATE A NARRATIVE. IT COULD HAVE SOME KIND OF SYMBOLIC MEANING, OR IT COULD SIMPLY COMMUNICATE THE PRESENCE OF THAT BODY ON THE STAGE AND ITS BEAUTY.

Q WHEN YOU SAY --

A LIKE BEAUTY OF A SUNSET.

Q WHEN YOU SAY "COULD COMMUNICATE A SYMBOLIC MEANING", COULD YOU DEFINE THAT A LITTLE FURTHER?

A I'M TRYING TO THINK OF AN APPROPRIATE EXAMPLE, BECAUSE WITHOUT AN EXAMPLE, IT'S DIFFICULT TO DEFINE, BECAUSE EACH DANCE HAS ITS OWN KIND OF MEANING OR ITS OWN KIND OF COMMUNICATION.

THERE ARE DANCES, PARTICULARLY IN PRIMITIVE AGES, WHERE THE ACTORS ARE MASKED, OR THE ACTORS ARE COSTUMED IN SUCH A WAY TO REPRESENT ANIMALS OR PERHAPS TO REPPESENT TREES OR OTHER ENTITIES OTHER THAN THEMSELVES; AND, THEREFORE, THEIR ROLE IN THE DANCE IS SYMBOLIC.

Q ALL RIGHT. AND WHEN YOU SAY A DANCE COULD COMMUNICATE MERELY AN ESTHETIC VALUE, DEFINE THAT A LITTLE BIT MORE, IF YOU CAN.

A I DON'T KNOW IF I CAN GO BEYOND WHAT I'VE ALREADY SAID. THE DANCE ON ONE LEVEL COMMUNICATES THE BEAUTY OF THE HUMAN BODY. ADDITIONALLY, DANCE INVOLVES MOVEMENT, SO THE SPECTATOR IS NOT ONLY ADMIRING THE BEAUTY OF THE HUMAN BODY, HE IS ADMIRING THE BEAUTY OF THE HUMAN BODY IN MOTION.

Q ARE THERE ANY BALLETS THAT, IN YOUR OPINION, COMMUNICATE THE BEAUTY OF THE HUMAN BODY WITHOUT ANY KIND OF STORY?

A A GREAT MANY, PARTICULARLY MODERN EXAMPLES.

Q WHAT ARE SOME OF THOSE EXAMPLES?

A YOU WANT SPECIFIC TROUPES?

Q IF YOU KNOW OF ANY, IF YOU HAVE ANY.

A THE WORK OF ALWIN NIKOLAIS, WHO IS ONE OF THE MAJOR LEADERS OF MODERN DANCE MOVEMENT IN AMERICA. IT'S VERY DIFFICULT TO DESCRIBE THEM VERBALLY. I HAVE SOME PICTURES WITH ME OF THOSE PERFORMANCES, BUT LET ME MAKE THE POINT FIRST THAT HE HAS HIS DANCERS SOMETIMES DON A COSTUME, WHICH MAKES THEM UTTERLY UNRECOGNIZEABLE AS THEMSELVES, WHICH THEY REPRESENT SOMETHING ELSE.

SO HE MAKES THEM SOMETIMES LOOK LIKE BOTTLES OR LIKE KITES AND SO -- REFER ME AGAIN TO YOUR QUESTION.

Q ALL RIGHT. I ASKED YOU -- STRIKE THAT. I WILL START OVER.

YOU TOLD US THAT SOME DANCES DO NOTHING MORE THAN COMMUNICATE THE BODY IN MOTION AND THE BEAUTY OF THE BODY IN MOTION WITHOUT ANY PARTICULAR STORY LINE BEHIND IT; ISN'T THAT CORRECT?

A YES, RIGHT. THANK YOU.

BECAUSE THE WORK OF ALWIN NIKOLAIS IS HIGHLY ABSTRACT.

THESE ARE JUST VISUAL FORMS IN SPACE. THEY DO NOT TELL A STORY. IT'S A CONSTANTLY CHANGING DESIGN KIND OF LIKE A KALEIDOSCOPE.

Q WHAT IS MODERN BALLET?

A MODERN BALLET IS AN OUTGROWTH OF BALLET AS IT ORIGINATED IN THE WESTERN HEMISPHERE IN THE EIGHTEENTH CENTURY -- SEVENTEENTH CENTURY. IT'S VERY DIFFERENT FROM CLASSICAL BALLET IF YOU WANT ME TO --

Q YES, EXPLAIN THE DIFFERENCE.

A -- POINT THAT OUT.

CLASSICAL BALLET ORIGINATED IN THE SEVENTEENTH CENTURY AS AN AMUSEMENT FOR THE KING OF FRANCE, WHO WAS VERY RICH AND VERY BORED, AND WHAT IT IS IS A HIGHLY ARTIFICIAL DISCIPLINE. IT'S A DISCIPLINE IN WHICH ACTORS SPEND YEARS, SPEND THEIR ENTIRE LIVES, LEARNING HOW TO STAND AND MOVE IN POSITIONS WHICH ARE NOT NATURAL TO THE HUMAN BODY, POSITIONS IN WHICH THEIR FEET ARE TURNED OUT NINETY DEGREES FROM THEIR ANKLES INSTEAD OF STRAIGHT FORWARD.

THEY LEARN TO WALK ON THEIR TOES. THEY LEARN TO LIVE ON THEIR TOES, ANOTHER POSITION WHICH IS NOT NATURAL TO THE HUMAN BODY AND WHICH EVENTUALLY RESULTS IN SHRINKAGE OF ALL THE LIGAMENTS OF THE ANKLE.

DURING THE LAST FIFTY YEARS, THERE HAS BEEN A TREMENDOUS REVOLT AGAINST THIS UNNATURAL RIGID DISCIPLINE, WHICH WE CALL CLASSICAL BALLET.

MS. JAFFE: I JUST -- I'M SORRY TO INTERRUPT. WILL YOU EXCUSE ME FOR A MOMENT? I THINK THIS IS VERY INTERESTING AS TO THE ANATOMICAL PROBLEMS THAT A PERFORMER IN THE FIELD OF

(THIS PAGE IS BEING INSERTED TO INDICATE THAT AN ERROR IN NUMBERING HAS BEEN MADE. THERE IS NO TESTIMONY OMITTED.)

CLASSICAL BALLET MIGHT SUFFER BASED UPON THE POSITIONS THAT THE DANCE REQUIRES; HOWEVER, I THINK THAT THIS IS SOMEWHAT FAR AFIELD AND IS A LITTLE BIT TIME CONSUMING AND IMMATERIAL AND IRRELEVANT.

MR. HERTZBERG: I'M GETTING THERE FAST. I'LL BE RIGHT TO THE POINT IN A MINUTE.

THE HEARING OFFICER: I HOPE SO.

THE WITNESS: I'LL TRY TO BE, TOO.

BY MR. HERTZBERG:

Q JUST DEFINE MODERN BALLET.

A IN ORDER TO DO THAT, I HAVE TO VERY BRIEFLY RUN THROUGH THE HISTORY OF IT, BECAUSE IN THE '20'S, THERE WAS AN ENORMOUS REVOLT AGAINST THE CLASSICAL BALLET DISCIPLINE.

MS. JAFFE: AGAIN -- EXCUSE ME. I'M SORRY. SAME OBJECTION.

THE WITNESS: WELL, MODERN BALLET BEGAN IN THE '20'S --

THE HEARING OFFICER: JUST A MOMENT. I'LL OVERRULE THE OBJECTION AT THIS TIME SUBJECT TO RENEWAL. SHE AND COUNSEL HAVE PROMISED TO GET TO THE POINT HERE.

BY MR. HERTZBERG:

Q WE HAVE TO GET TO THIS POINT THEN -- SIT BACK AND --

A WHAT WE CALL MODERN DANCE ORIGINATED AS A REVOLT AGAINST CLASSICAL BALLET, BUT MODERN BALLET TROUPES HAVE INCORPORATED ALL THE ELEMENTS OF MODERN DANCE INTO THEIR BALLET PERFORMANCES, SO THAT YOU CAN PROBABLY SAY NOWDAYS THAT THERE IS NO REAL DISTINCTION BETWEEN MODERN BALLET AND MODERN DANCE.

A CASE IN POINT MIGHT BRING THIS TO CONCLUSION. TWO YEARS AGO, AT U.C.L.A., I SAW THE WINNIPEG BALLET, AND IT HAD BEEN SOME TIME SINCE I HAD SEEN A CLASSICAL BALLET TROUPE. I WAS EXPECTING SOMETHING LIKE THE SADLER'S WELLS BALLET, WHICH IS VERY TRADITIONAL. I WAS AMAZED AND IMPRESSED TO SEE THE WINNIPEG BALLET PERFORMED ALL MANNER OF DANCES. THERE WERE SOME DANCES WHICH YOU COULD CALL MODERN DANCE. OTHERS YOU COULD CALL JAZZ DANCING, BLUES DANCING, GO-GO DANCING, ROCK DANCING, AFRO-CUBAN DANCING, EVERY KIND OF DANCE IMAGINABLE, EVEN A KIND OF DANCE FOR WHICH THERE IS NO TITLE, WHICH IS SOMETIMES COVERED BY A TERM "FREE-STYLE DANCING".

Q OKAY. WHAT IS, IN THE THEATER ARTS, KNOWN AS -- WHAT IS KNOWN AS THE BACCHANALIAN REVELRIES?

A THE TERM COMES FROM THE WORSHIP IN GREECE OF THE GOD BACCHUS, THE GOD OF WINE, THE GOD OF FERTILITY. DURING THE FESTIVALS OF BACCHUS, THERE WAS, OF COURSE, A LOT OF DRINKING OF WINE, AND THE WORD HAS COME IN COMMON PARLANCE TO REFER TO DRUNKEN ORGIES.

Q WOULD YOU DEFINE THAT A LITTLE BIT MORE?

A A DRUNKEN ORGY?

Q YES.

MS. JAFFE: WELL, AT THIS POINT, I OBJECT. I DON'T --

MR. HERTZBERG: DOES THAT --

MS. JAFFE: I DON'T BELIEVE THAT IS A SUBJECT FOR EXPERT TESTIMONY.

THE HEARING OFFICER: I'LL OVERRULE THE OBJECTION AT THIS TIME.

MS. JAFFE: IS COUNSEL GOING TO ATTEMPT TO QUALIFY THE

WITNESS IN THE FIELD OF AN EXPERT?

THE WITNESS: AN ORGY IS A SEXUAL EXPERIENCE INVOLVING A GROUP OF PEOPLE. THAT WE CAN GET FROM THE DICTIONARY.

IN BACCHANALIAN ORGIES, THERE WERE NO DISTINCTIONS BETWEEN SPECTATORS AND PARTICIPANTS. EVERYONE WAS A PARTICIPANT. THERE WAS NO DISTINCTION BETWEEN PERFORMER AND AUDIENCE. THERE WAS NO AUDIENCE. ALL WERE PERFORMERS.

BY MR. HERTZBERG:

Q ALL RIGHT. NOW, CAN YOU GIVE US ANY EXAMPLES IN THE MODERN WORLD OF SCANTILY-CLAD BALLETS?

A ALL BALLET, AS FAR AS I KNOW, IS SCANTILY CLAD AND HAS BEEN FROM THE VERY BEGINNING, BECAUSE THE PRIMARY VISUAL PLEASURE IN DANCE IS WATCHING THE HUMAN BODY ON DISPLAY, NOT CONCEALED BY A LOT OF CLOTHING.

SO BALLET HAS ALWAYS BEEN SCANTILY CLAD.

RECENTLY, WITHIN THE LAST -- SINCE THE '20'S, SINCE THE MODERN DANCE REVOLUTION, I CAN GIVE YOU EXAMPLES OF NUDE BALLET.

Q THAT'S WHAT I'M TALKING ABOUT. THAT'S REAL SCANTY. WHAT ARE THE EXAMPLES OF NUDE BALLETS?

A IN AMERICA, THE JOFFREY BALLET HAS PERFORMED NUDE. ALWIN NIKOLAIS, WHOM I'VE ALREADY MENTIONED, HAS NOT ONLY HAD HIS DANCERS PERFORM NUDE BUT ON TELEVISION ON P.B.S. IN NEW YORK. THERE WAS A ONE-HOUR SPECIAL OF ALWIN NIKOLAIS' CHOREOGRAPHY IN WHICH, SURPRISINGLY ENOUGH, THEY SHOWED THOSE NUDE PERFORMERS ON TELEVISION.

ERICK HAWKINS, WHO WAS RECENTLY AT U.C.L.A., HAS

HIMSELF DANCED NUDE AND HAS CHOREOGRAPHED BALLETS INVOLVING NUDE DANCERS. THE NETHERLANDS BALLET HAS GONE ON WORLD TOURS AND MADE THEMSELVES QUITE WELL KNOWN BECAUSE OF NUDE PERFORMANCES.

ALSO, THE AFRICAN BALLET COMPANY. THE DANCE COMPANY OF SENEGAL, WHICH IS CURRENTLY MAKING A U.S. TOUR. THE JOFFREY BALLEY IN NEW YORK CITY.

Q HOW ABOUT THE PLAY CALLED "HAIR", IS THAT A BALLET?

A WELL, YES, THIS WOULD FALL UNDER A CATEGORY, IF YOU CAN CATEGORIZE SUCH PERFORMANCES, AS ROCK BALLET. IT HAS BEEN CALLED ROCK BALLET BY DANCE CRITICS, I THINK, IN "DANCE MAGAZINE".

Q HOW ABOUT "OH, CALCUTTA"?

A "OH, CALCUTTA" AND "HAIR" WOULD BE TWO EXAMPLES OF ROCK BALLET, AGAIN INCORPORATING A GREAT MANY STYLES OF DANCE.

Q SO WHAT YOU ARE TELLING US, IN EFFECT, IS THAT MODERN BALLET INCLUDES ALL DIFFERENT TYPES?

A YES, IT'S HIGHLY EXPERIMENTAL, VERY FLEXIBLE. IT INCORPORATES EVERY ELEMENT OF DANCE FROM THE MOST POPULAR TO THE MOST REFINED.

Q OKAY. NOW, YOU HAD THE OPPORTUNITY TO SEE THE DANCES AT THE BODY SHOP, DID YOU NOT?

A YES.

Q ALL RIGHT. AND THAT WAS APPROXIMATELY IN DECEMBER OF LAST YEAR?

A A YEAR AGO, RIGHT.

Q AND IN ADDITION TO THAT -- AND YOU DID SIT THERE AND SEE THE WHOLE SHOW?

A I SAW THREE PERFORMERS, AND I UNDERSTAND THERE WERE

FIVE GIRLS ON THAT EVENING, SO I DID NOT SEE THE WHOLE SHOW.

Q IN ADDITION TO THAT, HOWEVER, YOU HAD AN OPPORTUNITY TO VIEW A FILM, DID YOU NOT?

A YES.

Q AND THE FILM, FROM WHAT YOU SAW, DEPICTED THE SAME STAGE AS YOU SAW?

A RIGHT.

Q AND THE SAME DANCERS YOU SAW?

A YES.

Q NOW, I'M GOING TO ASK YOU TO COMPARE, IF YOU COULD, THE TYPE OF DANCE THAT YOU SAW AT THE BODY SHOP WITH THE BALLETS YOU'VE JUST BEEN DESCRIBING. TELL US WHAT THE SIMILARITIES ARE, WHAT THE DIFFERENCES ARE, IF ANY.

MS. JAFFE: WELL, AT THIS POINT, I WILL INTERPOSE SEVERAL OBJECTIONS, AND THE FIRST BEING IT CALLS FOR SPECULATIONS AND CONCLUSION AS TO THE MODERN BALLET AS OPPOSED TO WHAT WAS GOING ON IN THE BODY SHOP.

ALSO, THERE IS AN INSUFFICIENT FOUNDATION TO SHOW -- WELL, IT'S IMMATERIAL AND IRRELEVANT AS THAT THE WITNESS HAS NOT BEEN ESTABLISHED TO BE IN THE PREMISES IN ANY OF THE DATES ALLEGED IN THE ACCUSATION.

THE HEARING OFFICER: CAN YOU LAY A FOUNDATION ON THIS MATTER, COUNSEL?

MR. HERZBERG: YES, SURE. I'LL HAVE TO PUT SOME OTHER WITNESSES ON BECAUSE WE'VE GOT A FILM HERE WHICH TYPICALLY SHOWS THIS SAME DANCE EVERY TIME.

THE HEARING OFFICER: LET'S LAY A FOUNDATION. IT'S DIFFICULT. I APPRECIATE YOUR PROBLEM.

MR. HERTZBERG: I'M TAKING HER OUT OF ORDER BECAUSE I WOULD PUT THE FILM ON FIRST, WHICH SHE HAS ALREADY SEEN. SHE HAS ALREADY TESTIFIED SHE WAS THERE IN DECEMBER OF LAST YEAR AND SEEN THESE DANCES, AND I DON'T THINK THERE IS MUCH DIFFERENCE IN ANY OF THEM. THEY'RE PRACTICALLY ALL THE SAME. I DON'T UNDERSTAND WHAT THE OBJECTION IS AS FAR AS --

THE HEARING OFFICER: FIRST OF ALL, WE DON'T HAVE ANY EVIDENCE THAT THEY'RE ALL THE SAME.

MR. HERTZBERG: WELL --

THE HEARING OFFICER: IT MAY WELL BE. I MEAN, TO TIE IT TOGETHER --

MR. HERTZBERG: I CAN DO THAT. I HAVE A WITNESS HERE TO DO IT WITH. I CAN TAKE HER OFF AND PUT HIM ON. IT JUST CREATES A LOT OF PROBLEMS, THAT'S ALL, BUT I'LL DO IT.

MS. JAFFE: WELL, I'M NOT GOING TO --

THE HEARING OFFICER: EITHER THAT OR A MOTION TO STRIKE SUBJECT TO -- YOU HAVE A MOTION TO STRIKE ON THE TABLE NOW, BUT SUBJECT TO TYING IT UP LATER.

MR. HERTZBERG: I'LL TIE IT UP LATER.

MS. JAFFE: I SUBMIT IT.

THE HEARING OFFICER: YOU HAVE AN OBJECTION, DO YOU?

MS. JAFFE: OBJECTION ON THE GROUND THAT IT'S IMMATERIAL AND IRRELEVANT BECAUSE THIS WITNESS HAS NOT BEEN SHOWN TO HAVE OBSERVED THAT WHICH IS ALLEGED IN THE ACCUSATION; HENCE, WHAT SHE SAW, WHICH I ASSUME SHE WILL ANALOGIZE TO MODERN DANCE, IS WITHOUT FOUNDATION.

MR. HERTZBERG: LET ME ASK --

MS. JAFFE: AND, FURTHERMORE, IT CALLS FOR SPECULATIONS

AND CONCLUSIONS. I FEEL IT WOULD BE MORE PROPER IF SHE WERE TO, FOR EXAMPLE, DESCRIBE THE MOVEMENTS OF THE DANCERS WHICH SHE OBSERVED IN THE PREMISES ON THE OTHER OCCASION THAT SHE WAS THERE AND THE OCCASION WHICH APPARENTLY IS NOT ONE ALLEGED IN THE ACCUSATION.

MR. HERTZBERG: LET ME ASK A COUPLE OF QUESTIONS OF THE WITNESS.

THE HEARING OFFICER: ARE YOU GOING TO LAY FOUNDATION?

MR. HERTZBERG: YES.

THE HEARING OFFICER: ALL RIGHT. THE OBJECTION, AS FAR AS THE FOUNDATION, I THINK, IS PROPER. ON THE OTHER BASIS, IT'S OVERRULED. BUT HE IS GOING TO -- MR. HERTZBERG IS GOING TO LAY FOUNDATION.

BY MR. HERTZBERG:

Q WHEN YOU OBSERVED THESE DANCES, WERE THE LADIES DANCING NUDE?

A ARE YOU REFERRING TO THE BODY SHOP?

Q YES.

A YES.

Q TELL US WHAT YOU SAW THERE DECEMBER, 1973.

A I SAW THREE DIFFERENT DANCERS PERFORM ON THE STAGE. I BELIEVE EACH ONE OF THEM DID TWO DANCES.

Q WERE THEY NUDE?

A THEY WERE NUDE, YES. THEY EACH DANCED TO THE MUSIC OF THE JUKEBOX, BUT I DO RECALL THAT EACH GIRL DID HAVE A PERSONAL STYLE OF DANCING. IT COULD ALL FALL UNDER THE CATEGORY

MS. JAFFE: OBJECTION. MOTION TO STRIKE AS GOING BEYOND

THE SCOPE OF THE QUESTION AS TO THE STATEMENT BEGINNING WITH -- EXCUSE ME FOR INTERRUPTING. BEGINNING WITH "EACH GIRL HAD HER OWN STYLE --"

MR. HERTZBERG: I'LL MOVE TO STRIKE IT.

MS. JAFFE: ALL RIGHT. I'LL JOIN IN THE MOTION.

THE HEARING OFFICER: JOINT MOTION GRANTED.

BY MR. HERTZBERG:

Q DID YOU HEAR THE TESTIMONY OF THE TWO POLICE OFFICERS THIS MORNING CONCERNING WHAT THEY SAW THERE?

A YES, I DID.

Q WAS IT ANY DIFFERENT THAN YOU SAW?

A NO.

MR. HERTZBERG: SUBMITTED.

THE HEARING OFFICER: ALL RIGHT. I THINK THE CURRENT STATE IS THAT THERE IS AN OBJECTION SUSTAINED ON THE GROUND OF LACK OF PROPER FOUNDATION, AND YOU'VE ATTEMPTED TO LAY THE FOUNDATION.

THERE IS NO OBJECTION TO RULE ON AT THE PRESENT TIME. IS THERE?

MS. JAFFE: YES, I OBJECT TO THE QUESTION ON THE GROUND THAT IT CALLS FOR --

THE HEARING OFFICER: WHAT WAS THE QUESTION? THE QUESTION HAS BEEN ANSWERED REGARDING WHAT SHE SAW -- WHAT -- HER VIEW OF THE TESTIMONY OF THE OFFICERS. NOW, THAT, I BELIEVE, WAS TO LAY FOUNDATION.

MR. HERTZBERG: RIGHT.

THE HEARING OFFICER: THERE IS NO QUESTION ON THE FLOOR.

MS. JAFFE: YES, THERE'S NO -- ALL RIGHT. IF THERE IS NO --

MR. HERTZBERG: I'LL WITHDRAW --

MS. JAFFE: I'LL WITHDRAW THE OBJECTION AND WAIT FOR THE QUESTION.

THE HEARING OFFICER: THAT WOULD HELP. THANK YOU.

MS. JAFFE: WELL, THANK YOU.

BY MR. HERTZBERG:

Q WOULD YOU COMPARE THE DANCES THAT YOU SAW AT THE BODY SHOP, BOTH PERSONALLY FROM THE FILM YOU OBSERVED AND FROM WHAT YOU HEARD FROM THE OFFICERS THIS MORNING, AS FAR AS THE COMMUNICATIVE ASPECT OF THEIR DANCE IS CONCERNED WHEN COMPARED TO THE COMMUNICATIVE ASPECT OF THE NUDE BALLETS YOU'VE HERETOFORE TESTIFIED ABOUT.

MS. JAFFE: OBJECTION. IT'S COMPOUND. IT CALLS FOR SPECULATION AND CONCLUSION. I BELIEVE THAT IT IS SUFFICENT THAT THE WITNESS TESTIFIED THAT THE DANCES WERE ACCORDING TO WHAT THE OFFICERS HAVE PREVIOUSLY DESCRIBED IN THEIR TESTIMONY, SO, THEREFORE, THIS WOULD BE CUMULATIVE, IF ANYTHING, AND I OBJECT ON THE BASIS IT CALLS FOR A CONCLUSION AND SPECULATION, AND I OBJECT ON THE BASIS OF THE FORM OF THE QUESTION, AND I OBJECT ON THE BASIS THAT IT WOULD BE CUMULATIVE.

MR. HERTZBERG: THAT WAS YOUR FIRST.

MS. JAFFE: OH, I'M SORRY.

MR. HERTZBERG: YOU HAVE REALLY ONLY GOT TWO.

THE HEARING OFFICER: AS I UNDERSTAND THE QUESTION, IT'S COMPARING THE DANCE, WHAT SHE HAS PERSONALLY SEEN AND AS SHE

LEARNED FROM THE OFFICERS' TESTIMONY AND FILMS REGARDING COMMUNICATIVE ASPECTS AS COMPARED WITH THE BALLETS ABOUT WHICH SHE HAS TESTIFIED ABOUT. ARE YOU TALKING ABOUT BALLET, MODERN DANCE OR --

MR. HERTZBERG: THE NUDE BALLETS WHICH SHE JUST REFERRED TO IN HER LAST ANSWER.

THE HEARING OFFICER: ALL RIGHT.

MS. JAFFE: ALL RIGHT. WELL, MR. HEARING OFFICER, FOR THE RECORD, AND THIS GOES TO THE WEIGHT, IN MY OPINION, WHAT THE WITNESS OBSERVED WAS NOT THOSE PERFORMANCES ALLEGED IN THE ACCUSATION, AND I OBJECT ON THAT BASIS.

IT WOULD GO TO THE WEIGHT. SHE HAS TESTIFIED THAT SHE SAW SIMILAR PERFORMANCES TO WHAT THE OFFICER TESTIFIED TO. HOWEVER, MY OBJECTION IS MADE WITH REGARD TO WHAT WEIGHT THE TESTIMONY SHOULD BE GIVEN INSOFAR AS THEY ARE NOT THE INSTANCES ALLEGED IN THE ACCUSATION.

MR. HERTZBERG: IT ONLY GOES TO THE WEIGHT.

MS. JAFFE: I HAVE SEVERAL OBJECTIONS.

THE HEARING OFFICER: THAT'S THE PROBLEM WE RUN INTO WHEN WE TAKE A WITNESS OUT OF ORDER. THAT GOES BACK TO, I BELIEVE, FOUNDATION.

MS. JAFFE: YES, I HAVE MULTIPLE OBJECTIONS TO THE QUESTION.

MR. HERTZBERG: I WAS DISTRACTED FOR A MOMENT.

THE HEARING OFFICER: I COMMENTED THAT IT GOES BACK TO THE PROPER FOUNDATION WE HAVE HERE REGARDING THE FILMS, WHICH ARE NOT IN EVIDENCE YET, ONE OF THE PROBLEMS WE'VE GOT, REGARDING HER PERSONAL VIEWS AS TO THE DANCING, WHETHER THAT WAS THE SAME DANCING AS WAS BEING PERFORMED, I ASSUME, AS ON NOVEMBER 1ST,

5TH, 9TH, 15TH, ET CETERA.

MR. HERTZBERG: ONE OF THE OFFICERS TESTIFIED HE WAS IN THERE THREE HUNDRED TIMES AND THE SAME DANCES EVERY TIME.

MS. JAFFE: I BELIEVE THE RECORD DOES NOT REFLECT THAT. HE TESTIFIED THAT ON THREE HUNDRED OCCASIONS HE OBSERVED FEMALE DANCERS EXPOSING THEIR PUBIC HAIRS. HE DID NOT STATE THAT IT WAS THE SAME DANCE.

THE HEARING OFFICER: I DO NOT RECALL HIM STATING THAT. AS I RECALL, HE IS NOT EXACTLY A STUDENT OF THE DANCE, EITHER ONE OF THOSE OFFICERS THIS MORNING.

MR. HERTZBERG: WELL, LET ME SAY THIS: I WILL OFFER THIS SUBJECT TO FURTHER FOUNDATION ONLY BECAUSE I OFFERED THIS WITNESS OUT OF ORDER, BUT IT CREATES A PRACTICAL PROBLEM. I CAN TAKE HER OFF AND PUT SOMEBODY ELSE ON, BUT WE'LL NEVER FINISH IN TIME.

IN ANY EVENT, I WON'T TIE IT UP FOR FOUNDATION.

THE HEARING OFFICER: THERE WOULD BE A SEPARATE GROUNDS TO THE MOTION TO STRIKE THE TESTIMONY OTHER THAN THE RESERVED RULING ALREADY HELD.

MS. JAFFE: VERY WELL.

BY MR. HERTZBERG:

Q DO YOU REMEMBER THE QUESTION?

A YES.

Q CAN YOU ANSWER IT? ANSWER THE QUESTION.

A I'LL DEAL FIRST WITH THE SIMILARITIES.

Q ALL RIGHT.

A IN THE MOST FUNDAMENTAL SENSE, BOTH - WHAT SHALL I

SAY - BOTH PERFORMANCES -- WE'RE DEALING WITH TWO TYPES OF PERFORMANCES.

THE HEARING OFFICER: WHAT ARE THE TWO TYPES?

THE WITNESS: THE PERFORMANCE AT THE BODY SHOP CLASSIFIED AS COMPARED TO THE PERFORMANCES OF CONTEMPORARY BALLETS AND MODERN THEATER GROUPS. BOTH ARE THE PRESENTATIONS OF DANCE AND THE EXPERIENCE, THE ESTHETIC EXPERIENCE, OF WATCHING A DANCE IS IDENTICAL IN EACH.

THE ESTHETIC PLEASURE IS WATCHING THE HUMAN BODY ON DISPLAY.

MS. JAFFE: WELL, AT THIS POINT, I OBJECT AND MOVE TO STRIKE THAT PORTION OF THE ANSWER - EXCUSE ME, AGAIN - BEGINNING WITH "ESTHETIC" AS GOING BEYOND THE SCOPE OF THE QUESTION; AND, FURTHERMORE, IT CALLS FOR A SPECULATION AND CONCLUSION; AND ALSO I WOULD LIKE TO ASK THE QUESTION -- ASK A QUESTION OF THE WITNESS ON VOIR DIRE AT THIS POINT.

MR. HERTZBERG: WELL, LET'S TAKE ONE AT A TIME. I DON'T THINK YOU REALLY UNDERSTOOD THE QUESTION BASED UPON YOUR OBJECTION.

MS. JAFFE: ALL RIGHT. I HAVE SAT HERE, MR. HEARING OFFICER, ALL DAY LONG LISTENING TO COUNSEL'S REFERENCE TO WHAT I UNDERSTAND AND WHAT I DON'T UNDERSTAND, AND I AM AT THIS POINT BECOMING A LITTLE TIRED OF IT, AND I REQUEST AN ADMONITION TO THAT EFFECT.

THE HEARING OFFICER: I'M NOT SURE WHAT THE ADMONITION, FORM OF THE ADMONITION WOULD BE. I THINK IT'S GETTING CLOSE, BUT IT STARTED IN LEGITIMATE ARGUMENT. IT MIGHT BE. I THINK IT MIGHT EXPEDITE MATTERS IF THE COUNSEL FOR THE RESPONDENT

WOULD REFRAIN FROM THAT PARTICULAR PHRASE WHICH WAS USED SEVERAL TIMES. IT'S GETTING CLOSE TO PERSONAL ATTACK, PERHAPS. I'M NOT SAYING THAT IT IS, BUT IT'S GETTING CLOSE THERE.

WHERE --

MS. JAFFE: WELL, I HAD INTERPOSED CERTAIN OBJECTIONS AND ALSO REQUESTED - I BELIEVE I SHOULD HAVE SEPARATED THEM - AN OPPORTUNITY TO QUESTION THE WITNESS ON VOIR DIRE.

MR. HERTZBERG: WELL, THE WITNESS, YOUR HONOR, IS ANSWERING THE QUESTION. COUNSEL HAS OBJECTED. I CAN SAY HONESTLY I DON'T UNDERSTAND THE OBJECTION, SO I CAN'T OBJECT TO IT.

THE HEARING OFFICER: THE QUESTION, I BELIEVE, WAS TO EXPLAIN -- GOING BACK HERE, WAS, AS I UNDERSTAND IT, WAS TO COMPARE, BASED UPON THE PERSONAL VIEWS AND THE OFFICERS' TESTIMONY AND THE FILMS, THE COMMUNICATIVE ASPECTS WITH NUDE BALLET, WHICH SHE TESTIFIED ABOUT AND THE DANCING AT THE BODY SHOP, AND SHE SAID SHE WOULD START ON THE SIMILARITIES, AND SHE TESTIFIED THEY WERE BOTH -- THERE WAS ESTHETIC EXPERIENCE IN BOTH OF THEM.

MS. JAFFE: ALL RIGHT, AND I OBJECT TO THAT PORTION THEY WERE ESTHETIC EXPERIENCES IN THAT THEY WERE SIMILAR IN THAT FASHION AND MOVE TO STRIKE AS GOING BEYOND THE SCOPE OF THE QUESTION WHICH WAS INDICATED TO BE DESCRIBING THE SIMILARITIES, AND I BELIEVE THAT THAT PORTION OF THE ANSWER WENT TO CONCLUSIONS AND SPECULATIONS AS TO WHAT WAS AND WHAT WASN'T ESTHETIC, SO I MOVE TO STRIKE ON THAT BASIS.

MR. HERTZBERG: WELL, THE QUESTION, YOUR HONOR, WAS NOT WHAT THESE SIMILARITIES WERE. I HAD ASKED HER TO COMPARE THEM. WHEN YOU COMPARE TWO THINGS --

THE HEARING OFFICER: AND SHE SAID SHE WOULD GIVE THE SIMILARITIES FIRST AND THEN THE DISSIMILARITIES.

MR. HERTZBERG: RIGHT, AND I ASSUME WHEN YOU TALK ABOUT SIMILARITIES, YOU CAN TALK ABOUT THE ESTHETIC VALUE, ITS BEAUTIFUL VALUE. I CAN'T IMAGINE THAT WORD TO BE A CONCLUSION. EVERYTHING IN LIFE IS A CONCLUSION, BUT I GUESS THE EXTENT OF THE CONCLUSION IS DETERMINATIVE BY WHETHER THE OBJECTION IS GOING TO BE SUSTAINED OR NOT.

I SEE NO BASIS FOR AN OBJECTION.

THE HEARING OFFICER: OBJECTION OVERRULED. CONTINUE.

MS. JAFFE: ALL RIGHT. MAY I BE PERMITTED TO ASK THE WITNESS AT THIS POINT A FEW QUESTIONS ON VOIR DIRE?

THE HEARING OFFICER: WHAT IS THE BASIS OF YOUR --

MS. JAFFE: AS TO THE LAST STATEMENT REGARDING THE ESTHETIC QUALITY. I WANT TO KNOW SPECIFICALLY HER FOUNDATION FOR THE STATEMENT.

MR. HERTZBERG: OH, I'D BE HAPPY TO. ASK HER ANYTHING YOU WANT.

MS. JAFFE: ALL RIGHT. THANK YOU VERY MUCH.

MR. HERTZBERG: I CAN'T WAIT FOR THAT.

VOIR DIRE EXAMINATION

BY MS. JAFFE:

Q ALL RIGHT. MISS CHASE, WOULD YOU TELL US, WHEN YOU REFERRED TO YOUR STATEMENT REGARDING THE ESTHETIC VALUE OF BOTH THE DANCE AT THE BODY SHOP AND CONTEMPORARY BALLET, WHETHER OR NOT YOU WERE MAKING REFERENCE TO YOUR PERSONAL JUDGMENT THAT BOTH OF THESE DANCES HAD ESTHETIC VALUE?

A I WAS NOT ONLY REFERRING TO MY OWN JUDGMENT, BUT THE JUDGMENT OF CRITICS, CONTEMPORARY AND HISTORICAL; TO THE SURVEY I TOOK AT U.C.L.A. OF THE ENTIRE THEATER DEPARTMENT AS TO THE ESSENTIAL ESTHETIC VALUE OF WATCHING A DANCE.

Q ALL RIGHT. NOW, AS TO THE CRITICS THAT YOU REFERRED TO, TO YOUR KNOWLEDGE, DID ANY OF THEM OBSERVE ANY DANCES IN THE BODY SHOP FROM NOVEMBER THE 1ST, 1973, TO FEBRUARY THE 23RD, 1974?

A NOT TO MY KNOWLEDGE, NO.

Q ALL RIGHT. AS TO THE SURVEY YOU TOOK OF THE FACULTY -- WAS IT?

A YES.

Q DO YOU KNOW WHETHER OR NOT ANY OF THOSE FACULTY MEMBERS OBSERVED PERFORMANCES IN THE PREMISES DURING THE PERIOD OF TIME THAT I PREVIOUSLY MENTIONED?

A NOT THESE PREMISES, NO.

Q ALL RIGHT. AND YOU MENTIONED ONE OTHER THING THAT YOU -- OH, AS TO THE HISTORICAL BASIS, YOU ARE LIMITING YOUR ANSWER AS TO THE ESTHETIC VALUE OF THE PERFORMANCES AT THE BODY SHOP BASED UPON YOUR PERSONAL OBSERVATIONS THAT YOU MADE ON THE DATES AND TIMES THAT YOU WERE THERE?

A I WOULD LIKE TO TRY TO EXPLAIN MYSELF.

Q COULD YOU ANSWER MY QUESTION?

A I DON'T UNDERSTAND YOUR QUESTION.

Q ALL RIGHT. OKAY, YOU MENTIONED YOU WERE BASING YOUR QUESTION IN PART ON THE HISTORY OF THE DANCE. WERE YOU BASING YOUR ANSWER PRIMARILY UPON YOUR PERSONAL KNOWLEDGE OF THE DANCES THAT YOU OBSERVED BEING PERFORMED IN THE PREMISES AND OTHER

BEST COPY AVAILABLE

INFORMATION YOU HAD OF THE DANCES IN THE BODY SHOP MORE THAN ON HISTORICAL SIGNIFICANCE?

A I WAS NEITHER MAKING AN ESTHETIC JUDGMENT NOR A PERSONAL OBSERVATION. I WAS TALKING ABOUT THE DEFINITION OF DANCE AS YOU CAN FIND IN THE DICTIONARY OR THEATER.

Q OH, THEN YOU WEREN'T CONSIDERING WHAT YOU ACTUALLY OBSERVED AT THE BODY SHOP AT ALL?

A I OBSERVED DANCES, AND DANCE IS THE BODY MOVING IN RHYTHM.

Q ALL RIGHT. AND THAT IS --

A I'M SAYING THAT IS THE ESSENTIAL SIMILARITY, THAT IN BOTH CASES THE THEATRICAL PERFORMANCES WERE DANCE.

Q ARE THERE OTHER DEFINITIONS OF DANCING?

A NOT THAT I KNOW OF, NO.

Q CAN OTHER ACTIVITIES BE PERFORMED WHILE MOVING THE BODY IN RHYTHM TO MUSIC?

A I PRESUME THEY COULD.

Q ALL RIGHT. COULD ONE, FOR EXAMPLE, MOVE THE BODY IN RHYTHM TO MUSIC AND MANIPULATE CERTAIN PROPS?

A YES, ONE COULD.

Q ALL RIGHT. COULD ONE COMMUNICATE WHILE MOVING THE BODY IN RHYTHM TO MUSIC IDEAS NOT RELATED TO THE DANCE ITSELF?

A I DON'T UNDERSTAND THE QUESTION.

Q ALL RIGHT. I WITHDRAW THE QUESTION.

MR. HERTZBERG: THIS IS A LITTLE FAR AFIELD.

MS. JAFFE: ALL RIGHT. I HAVE COMPLETED MY VOIR DIRE. THANK YOU.

MR. HERTZBERG: THANK YOU.

DIRECT EXAMINATION (RESUMED)

BY MR. HERTZBERG:

Q WOULD YOU CONTINUE NOW IN MAKING THE COMPARISON OF WHICH YOU SPOKE?

A IN BOTH INSTANCES, THE STYLES OF DANCING ARE ESSENTIALLY IDENTICAL. THE DIFFERENCE WOULD BE A DIFFERENCE, PERHAPS, IN THE TALENT AND THE TRAINING OF THE PERFORMERS, BUT IT WAS VERY MUCH THE SAME KIND OF DANCING THAT I'VE OBSERVED ON ALL THE -- ON MANY DIFFERENT OCCASIONS IN WATCHING MODERN DANCE TROUPES AND MODERN BALLETS.

BOTH INSTANCES TAKE PLACE IN A THEATRICAL ENVIRONMENT. BOTH ARE THEATRICAL EXPERIENCES INVOLVING PERFORMERS PERFORMING ON A STAGE BEFORE AN AUDIENCE, PRESUMABLY A STAGE SET FOR THE EXCLUSIVE USE OF THE PERFORMERS AND THE AREA IN THE BUILDING FOR EXCLUSIVE USE OF THE AUDIENCE, WHICH, ACCORDING TO THE DICTIONARY AND OTHER DEFINITIONS, CONSTITUTES A THEATER.

A THEATER IS A PLACE WITH A DESIGNATED AREA FOR THE PERFORMER, A DESIGNATED AREA FOR AN AUDIENCE IN WHICH A THEATRICAL PERFORMANCE TAKES PLACE.

IN BOTH CASES, ONE WOULD HAVE TO CALL THE PERFORMANCES THEATRICAL. IN THE CASE OF BALLET, IT'S A VERY ELABORATE THEATRICAL PERFORMANCE INVOLVING LARGE SETS, LARGE AMOUNTS OF MONEY, ELABORATE COSTUMES, MANY DANCERS, LOTS OF CHOREOGRAPHY.

IN THE CASE OF THE BODY SHOP, THE THEATRICAL ELEMENTS WERE VERY BARE AND VERY SIMPLE. THERE WAS A STAGE, A PERFORMER, A DANCE, MUSIC, LIGHTING, BUT STILL THE ESSENTIAL ELEMENTS OF THEATER ARE THERE. WITH REFERENCE TO THE EFFECT OF THE PERFORMANCE ON AN AUDIENCE --

MS. JAFFE: AT THIS POINT --

THE WITNESS: -- IDENTICAL --

MS. JAFFE: JUST A MOMENT.

THE WITNESS: I WOULD JUST LIKE TO FINISH MY SENTENCE.

MS. JAFFE: ALL RIGHT. I'M SORRY. EXCUSE ME.

I OBJECT. I BELIEVE SHE IS NOW - AND MOVE TO STRIKE - I BELIEVE SHE IS GOING WITHOUT THE SCOPE OF THE QUESTION AS TO THE EFFECT. SHE WAS -- THE QUESTION, AS I RECALL IT, WAS TO DESCRIBE THE SIMILARITIES BETWEEN WHAT SHE OBSERVED AT THE BODY SHOP AND CONTEMPORARY DANCE.

THE HEARING OFFICER: ALL RIGHT.

MS. JAFFE: SO I MOVE TO STRIKE ON THAT BASIS, AND I WONDER IF - BECAUSE THERE IS A PROBLEM - IF I COULD HAVE SOME SORT OF AN OPPORTUNITY TO MAKE MY OBJECTIONS.

THE HEARING OFFICER: WELL, PUT IT THIS WAY. YOU SAY "I OBJECT", AND THEN I'LL ASK THE WITNESS TO STOP AT THAT TIME. WE WILL TAKE THAT FORM OF OBJECTION, AND THEN GIVE YOUR BASIS.

MS. JAFFE: ALL RIGHT. I OBJECT AND MOVE TO STRIKE THAT PORTION OF THE TESTIMONY BEGINNING WITH THE -- APPROXIMATELY THE EFFECT ON THE BASIS IT GOES BEYOND THE SCOPE OF THE QUESTION ASKED.

MR. HERTZBERG: OKAY.

Q WOULD YOU TELL US WHAT --

THE HEARING OFFICER: GRANTED.

BY MR. HERTZBERG:

Q WOULD YOU MAKE A COMPARISON BETWEEN THE DANCES AT THE BODY SHOP AND THE BALLETS OF WHICH YOU EARLIER SPOKE AS

CONCERNS THE EFFECT UPON THE AUDIENCE.

MS. JAFFE: ALL RIGHT. NOW, AT THIS POINT, I OBJECT. THERE IS NO FOUNDATION THAT SHOWS THAT THIS WITNESS IS AN EXPERT IN THE FIELD OF THE EFFECT OF NUDE FEMALE PERFORMERS UPON AN AUDIENCE IN A PUBLIC PREMISES OR TAVERN.

MR. HERTZBERG: DOES SUCH A PERSON EXIST?

THE HEARING OFFICER: I THINK SHE TESTIFIED UNDER THE DEFINITION OF THEATER THAT WE HAD A THEATER IN THE BODY SHOP.

MS. JAFFE: SAME OBJECTION.

THE HEARING OFFICER: WELL, SHE IS TESTIFYING ABOUT ONE BALLET IN THE THEATER AND THE BODY SHOP AS A THEATER. NOW, YOU CALL IT A TAVERN. MAYBE LEGALLY IT IS. MAYBE LEGALLY IT IS MORE THAN THAT.

MS. JAFFE: I SUBMIT THAT I BELIEVE THERE ARE PROBABLY LICENSING REQUIREMENTS FOR THEATERS, AND THUS FAR THE RECORD IS DEVOID OF ANY EVIDENCE OF LICENSING OTHER THAN THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL LIQUOR LICENSE, AND I SUBMIT IT'S A QUESTION OF WEIGHT TO BALANCE THIS WITNESS'S EQUIVALENT THAT THE BODY SHOP IS A THEATER AGAINST THE REQUIREMENTS AND REGULATIONS AND ALSO THE FACTUAL DIFFERENCES OF THE TWO ESTABLISHMENTS.

THE HEARING OFFICER: SHE TESTIFIED, ACCORDING TO THE LEGAL - NOT LEGAL - I THINK THEATER DEFINITION OF THEATER -- EXCUSE ML. DICTIONARY DEFINITION OF THEATER WAS A PLACE FOR A STAGE AND A PLACE FOR A SEGREGATION OF -- SEPARATE AREA FOR THE AUDIENCE.

YOU'RE TALKING ABOUT THE LEGAL REQUIREMENTS. I DON'T -- THERE MIGHT BE OTHER LEGAL REQUIREMENTS: FIRE

REQUIREMENTS, ZONING REQUIREMENTS, AND SUCH --

MR. HERTZBERG: WE'RE NOT GOING TO GET INVOLVED IN THAT. LET ME JUST TAKE MY WITNESS.

MS. JAFFE: ALL RIGHT.

BY MR. HERTZBERG:

Q MISS CHASE, YOU HAVE TESTIFIED AS AN EXPERT AND QUALIFIED IN FEDERAL PROCEEDINGS, HAVE YOU NOT?

A YES.

Q STATE COURT PROCEEDINGS?

A YES.

Q ADMINISTRATIVE STATE COURT PROCEEDINGS?

A YES.

Q SUPERIOR COURT AND MUNICIPAL COURT?

A I BELIEVE SO.

Q UNITED STATES FEDERAL DISTRICT COURT?

A YES.

Q AND HAVE YOU IN THE PAST TESTIFIED AS AN EXPERT ON WHAT IS OR WHAT IS NOT A THEATER?

A YES, I HAVE.

Q DID YOU SURVEY -- DID YOU MAKE SURVEYS IN THE STATE OF CALIFORNIA TO DETERMINE WHAT ELEMENTS COMPRISE A THEATER?

A YES, I DID.

Q DID YOU HAVE THE USE OF COMPUTERS FOR THAT PURPOSE?

A YES.

Q DID YOU VISIT THEATERS THROUGHOUT THIS STATE FOR THAT PURPOSE?

A I SURVEYED ALL THE THEATERS IN THE CITY OF LOS

ANGELES PERSONALLY.

Q AND THE COUNTY OF LOS ANGELES, MANY OF THEM, TOO?

A YES.

Q PERSONALLY APPEARED, RIGHT?

A YES.

Q AND, IN ADDITION TO THAT, YOU MADE A STUDY OF WHAT ELEMENTS ARE NORMALLY INCIDENT TO A THEATER?

A YES.

Q IN THE STATE OF CALIFORNIA?

A THEY WERE GIVEN TO ME IN THE FORM OF COMPUTER PRINT-OUTS BY THE CALIFORNIA THEATER SURVEY, WHICH IS AN ORGANIZATION WHICH HAS DEVOTED ITSELF EXCLUSIVELY TO COMPILING JUST THAT KIND OF INFORMATION.

Q IN FURTHER DETERMINING YOUR -- REACHING YOUR OPINION AS TO WHAT IS OR IS NOT A THEATER, DID YOU DISCUSS IT WITH VARIOUS REPRESENTATIVE NEWSPAPERS?

A YES, I DID. I DISCUSSED IT WITH THE THEATER CRITICS OF LOS ANGELES PAPERS.

Q DID YOU DISCUSS IT WITH ANY PROFESSORS IN THE STATE OF CALIFORNIA?

A THAT WAS THE OCCASION OF MY INTERVIEW OF THE U.C.L.A. THEATER DEPARTMENT, YES.

Q AND WITH OTHER PERSONS BESIDES -- WELL, STRIKE THAT.

AND IN YOUR VARIOUS VISITS TO ALL THESE THEATERS, YOU DID TABULATE THESE VARIOUS ELEMENTS OF WHICH WE SPEAK?

A YES.

Q AND YOU MADE A COMPLETE STUDY OF THE WHOLE THING?

A YES.

Q WITHIN THE PAST YEAR?

A YES, IT WAS.

Q NOW, I ASKED YOU THIS QUESTION. IN MAKING THE COMPARISON THAT I ASKED YOU TO MAKE INITIALLY, WITH REGARD TO THE BODY SHOP ON THE ONE HAND AND THE VARIOUS BALLETS AT THEATERS ON THE OTHER HAND, OR ANY OTHER PLACE, COULD YOU COMPARE THE EFFECT UPON THE AUDIENCE, THE COMMUNICATIVE EFFECT UPON THE AUDIENCE OF ONE AS OPPOSED TO THE OTHER AS TO SIMILARITIES AND DISSIMILARITIES?

A I'M PERMITTED TO ANSWER THE QUESTION NOW?

Q SCARED THE WITNESS.

A YES.

Q YES, PLEASE DO.

A IN BOTH CASES, A THEATRICAL PERFORMANCE IS OFFERED WHICH ENTERTAINS, AMUSES - IT'S A SIMPLE ANSWER - RELAXES, AND GIVES PLEASURE TO AN AUDIENCE.

Q ALL RIGHT. WOULD YOU SAY THAT THE --

THE HEARING OFFICER: EXCUSE ME. I DON'T WANT TO INTERRUPT YOU, BUT WE HAD, AS I RECALL YOUR PRIOR MOTION FOR -- MOTION TO STRIKE IS DENIED, BEFORE I FORGET IT.

MS. JAFFE: I'M GOING TO RENEW THAT MOTION AT THE END OF THE TESTIMONY.

THE HEARING OFFICER: ALL RIGHT.

BY MR. HERTZBERG:

Q WOULD YOU SAY THAT THE PERFORMANCES AT THE BODY SHOP PARTAKE MORE OF GROSS SEXUALITY THAN OF COMMUNICATION?

A NO.

Q WOULD YOU SAY THAT THE PERFORMANCES AT THE BODY SHOP PARTAKE MORE OF GROSS SEXUALITY THAN THE PERFORMANCES AT THE BALLETS YOU SPOKE OF EARLIER IN YOUR TESTIMONY?

A NO.

Q WOULD YOU SAY THAT THEY PARTAKE OF LESS GROSS SEXUALITY THAN THE BALLETS YOU SPOKE OF EARLIER?

A NO.

Q WOULD YOU COMPARE FROM THE ASPECT OF GROSS SEXUALITY THE PERFORMANCES AT THE BODY SHOP ON THE ONE HAND AS OPPOSED TO THE PERFORMANCES OF THE BALLETS OF WHICH YOU SPOKE EARLIER? DO YOU UNDERSTAND THE QUESTION?

A YES, I DO. I'M NOT SURE I'M QUALIFIED TO SPEAK AS TO WHAT CONSTITUTES GROSS SEXUALITY, BUT I CAN SAY THIS REGARDING DANCE: DANCE IN BOTH INSTANCES, AND THAT IS ALL DANCE EVER SINCE THE BEGINNING OF TIME, HAS ALWAYS BEEN, TO SOME DEGREE, SENSUAL, SEXUAL, AND IT DOES INVOLVE THE HUMAN BODY ON DISPLAY IN THAT IT IS AN ADORATION AND APPRECIATION OF THE HUMAN BODY, AND THE HUMAN BODY IS, PER SE, NOT ONLY A BEAUTIFUL THING TO OBSERVE BUT A DESIRABLE THING AS WELL.

ALL DANCE IS -- TO SOME DEGREE IS SENSUAL. IN MY PERSONAL OPINION, I WOULD SAY THAT ONE WAS NOT MORE OR LESS SENSUAL THAN THE OTHER, AND, IN THAT RESPECT, I CAN ONLY SPEAK AS A LAY PERSON. I CAN ONLY SPEAK AS TO WHAT STRIKES ME AS SENSUAL.

I PERSONALLY FIND THE DANCES AT THE BODY SHOP LESS SENSUAL, LESS AROUSING, THAN SOME FORMS OF BALLET I'VE SEEN, BECAUSE I PERSONALLY PREFER SOMETHING THAT INVOLVES MORE SUBTLETY OR MORE SOPHISTICATION IN ITS PRESENTATION. THAT

WHAT I PERSONALLY RESPOND TO MORE.

Q SO ARE YOU SAYING TO US, IN EFFECT, THEN, THAT THE SEXUALITY IS IN THE EYE OF THE BEHOLDER?

A YES, BECAUSE, IN BOTH CASES, THE PERFORMERS WERE DOING NOTHING BUT DANCING.

Q NOW, IS ART A FORM OF A NECESSITY?

MS. JAFFE: I WOULD OBJECT. IT'S --

MR. HERTZBERG: I'LL WITHDRAW IT.

THE HEARING OFFICER: I DIDN'T HEAR ALL THE QUESTION.

MR. HERTZBERG: I'LL START OVER.

Q WOULD YOU COMPARE THE COMMUNICATIVE ASPECTS, IF YOU CAN, BETWEEN THE DANCE AT THE BODY SHOP ON ONE HAND AND THE BALLETS OF WHICH YOU SPOKE OF ON THE OTHER HAND?

A I'VE ALREADY MENTIONED ONE PART OF THE COMMUNICATIVE ASPECT, AND THAT IS THE COMMUNICATION OF THE BEAUTY OF THE HUMAN BODY, THE PLEASURE A SPECTATOR TAKES IN WATCHING THE HUMAN BODY IN MOTION TO MUSIC. THE OTHER ASPECT OF COMMUNICATION, WHICH WOULD TAKE PLACE IN BOTH INSTANCES, WOULD BE THE FACT THAT THERE IS A PERFORMER WHO IS A HUMAN BEING AND WHO IS RELATING DIRECTLY TO AN AUDIENCE.

IN OTHER WORDS, EACH PERFORMER BRINGS WITH HIM TO VARYING DEGREES HIS OWN ENERGY, HIS OWN VITALITY, AND THAT IS WHAT HE COMMUNICATES TO HIS AUDIENCE. HE COMMUNICATES HIS WARMTH, HIS EXUBERANCE.

Q IS THE DANCE NORMALLY DESIGNED TO DISPLAY RATHER THAN TO CONCEAL THE BODY?

A YES.

Q DEFINE THAT A LITTLE BIT MORE, IF YOU CAN.

A WELL, I SAID EARLIER THAT BALLET HAS ALWAYS BEEN SCANTILY CLAD FOR THAT REASON. THIS -- EVEN IN CLASSICAL BALLET, A BALLERINA WILL DRAW HER HAIR UP ON TOP OF HER HEAD TO REVEAL THE LINES OF HER NECK AND SHOULDERS.

IN CLASSICAL BALLET, LEOTARDS ARE WORN TO DISPLAY THE LINES OF THE BODY.

Q YOU HAVE BROUGHT WITH YOU SOME PICTURES OF SOME MODERN BALLETS IN THE NUDE?

A YES.

Q WHICH WOULD BE COMPARABLE FROM THE STANDPOINT OF EXPOSURE OF THE BODY TO THE SHOWS AT THE BODY SHOP?

A YES.

Q OR DISPLAY OF THE BODY?

A YES.

Q COULD YOU HAND ME THOSE?

A I HAVE THEM HERE. SHALL I DESCRIBE THEM?

Q I HAVE TO SHOW COUNSEL.

CAN WE TAKE A FIVE-MINUTE RECESS WHILE SHE'S --

MS. JAFFE: WELL, THIS IS GOING TO TAKE A COUPLE OF SECONDS.

MR. HERTZBERG: OH.

THE WITNESS: THEY'RE IDENTIFIED ON THE REVERSE SIDE IF THEY ARE NOT IDENTIFIED ON THE FACE.

THE HEARING OFFICER: ALL RIGHT. LET'S PROCEED.

MS. JAFFE: HE NOW INFORMS ME THERE IS SOMETHING ON THE REVERSE SIDE, SO I'D LIKE TO LOOK AT IT.

-- -- --

-- -- --

BY MR. HERTZBERG:

Q I SHOW YOU HERE -- I'LL TAKE THEM ONE AT A TIME, IF YOU DON'T MIND, WHAT APPEARS TO BE MARKED 1-B FOR IDENTIFICATION AND ASK YOU WHAT THAT DEPICTS?

MS. JAFFE: WELL, MAY I INTERPOSE AT THIS TIME -- PERHAPS THERE CAN BE AN AGREEMENT TO OBVIATE THE NECESSITY OF GOING OVER THEM ONE BY ONE.

THE WITNESS: ESPECIALLY OUT OF ORDER.

MS. JAFFE: ESPECIALLY OUT OF ORDER.

MR. HERTZBERG: WELL, HERE --

MS. JAFFE: COULD I INTERRUPT AND PERHAPS WE COULD DISCUSS OFF THE RECORD A POSSIBLE STIPULATION ON THESE?

THE HEARING OFFICER: ALL RIGHT.

(OFF-THE-RECORD DISCUSSION, AFTER WHICH THE FOLLOWING PROCEEDINGS WERE HAD:)

BY MR. HERTZBERG:

Q YOU HAVE BEFORE YOU A NUMBER OF PICTURES, MISS CHASE. WHAT ARE THESE PICTURES OF?

A THEY'RE PICTURES OF VARIOUS DANCE PERFORMANCES, CONTEMPORARY DANCE PERFORMANCES, BALLET AND MODERN DANCE.

Q IN YOUR OPINION, DO THEY ACCURATELY DEPICT THE DANCE THEY INTEND TO?

A YES.

Q AND ARE THESE THE DANCES OF WHICH YOU SPOKE ON DIRECT EXAMINATION?

A YES.

Q IN OTHER WORDS, YOU REFERRED TO THESE DANCES?

A YES.

Q AND DO THESE PICTURES DEPICT THE SCANTILY-CLAD INDIVIDUAL SHOWING THEIR PRIVATES AND ET CETERA?

A YES, FOR EXAMPLE, WE SPOKE OF "OH, CALCUTTA".

MS. JAFFE: I OBJECT. THE EXAMPLE IS GOING BEYOND THE SCOPE OF THE QUESTION, I BELIEVE. I BELIEVE THE PICTURES WILL SPEAK FOR THEMSELVES IF THEY --

MR. HERTZBERG: I'M LAYING A FOUNDATION.

MS. JAFFE: ALL RIGHT. I'LL SUBMIT MY OBJECTION TO A RULING.

THE HEARING OFFICER: OVERRULED. HE'S LAYING A FOUNDATION AS TO WHICH ONES THEY DEPICT. SHE TESTIFIED AS TO VARIOUS -- "OH, CALCUTTA" AND SUCH. THESE REFER TO THEM, I ASSUME.

BY MR. HERTZBERG:

Q IS EACH PICTURE MARKED WITH THE VARIOUS BALLET?

A NOT EACH PICTURE. THIS GROUP, FOR EXAMPLE, IS A GROUP OF PICTURES TAKEN FROM PERFORMANCES OF "OH, CALCUTTA", THIS ENTIRE GROUP.

Q COULD YOU MARK THAT AS A GROUP AND WE CAN PERHAPS PUT STAPLES INTO THAT GROUP.

A (WITNESS MARKS AND STAPLES GROUP OF PICTURES.)

Q NOW, WHAT OTHER?

A WAIT A MINUTE. "OH, CALCUTTA".

Q WHAT OTHER GROUPS ARE THERE OF THE --

A THIS GROUP OF PICTURES IS FROM THE NATIONAL DANCE COMPANY OF SENEGAL, AND I'LL MARK THAT AND STAPLE THEM.

Q ALL RIGHT. WHAT'S THE NATIONAL DANCE COMPANY OF

SENEGAL?

A A MODERN BALLET TROUPE --

Q OH.

A -- FROM SENEGAL. THESE FOUR PICTURES ARE FROM PERFORMANCES OF VARIOUS MODERN BALLETS BY ERICK HAWKINS, THE AMERICAN CHOREOGRAPHER.

Q THE FAMOUS CHOREOGRAPHER?

A YES.

Q AND ARE THOSE IN THE NUDE?

A YES, NUDE AND SEMI-NUDE.

Q DO YOU HAVE SOMETHING THERE FROM A NUDE BALLET ON TELEVISION?

A THIS IS AN ARTICLE REGARDING THE ALWIN NIKOLAIS ONE-HOUR TELEVISION SPECIAL THAT I REFERRED TO IN WHICH THE DANCERS WERE NUDE AND TELEVISED.

Q OKAY. WOULD YOU MARK THAT?

A (WITNESS COMPLIES.)

THIS IS A GROUP OF PICTURES OF THE NETHERLANDS BALLET IN PERFORMANCE. THESE ARE MARKED.

Q WOULD YOU TELL US ARE THOSE -- ALL OF THOSE VARIOUS BALLETS PLAYED IN MAJOR CITIES IN THE UNITED STATES?

A YES.

Q ALL MAJOR CITIES?

A AS FAR AS I KNOW, YES. THEY HAVE ALL -- ALL OF THE ONES HERE HAVE PLAYED AT U.C.L.A. WITH THE EXCEPTION OF "OH, CALCUTTA".

THESE ARE PHOTOGRAPHS FROM A MODERN DANCE REVIEW AT THE VILLAGE GATE IN NEW YORK CALLED "LET MY PEOPLE COME".

THIS IS THE JOFFREY BALLET IN NEW YORK CITY.

AND THESE ARE EACH LABELLED. THEY'RE EACH PICTURES OF PERFORMANCES BY TWO SMALL EXPERIMENTAL MODERN DANCE ORGANIZATIONS, ONE OF THE CHOREOGRAPHED BY ROBERT WILSON AND THE OTHER BY BRIAN MC DONALD IN NEW YORK.

Q AND ARE THOSE ALL TYPICAL OF BALLETS PLAYING IN THE UNITED STATES TODAY?

A YES.

MR. HERTZBERG: I'LL OFFER THEM ALL AS ONE GROUP EXHIBIT, NO. 2, RESPONDENT'S 2 IN EVIDENCE.

MS. JAFFE: ALL RIGHT. I OBJECT TO THEIR ADMISSION ON THE GROUND THAT THEY'RE IMMATERIAL AND IRRELEVANT INSOFAR AS THEY DO NOT DEPICT PERFORMANCES IN A PUBLIC PREMISES, A TAVERN OR A BAR, BUT DEPICT BALLET GROUPS WHICH ARE DIFFERENT AND DISTINCT FROM WHAT IS MENTIONED IN THE LA RUE DECISION.

LA RUE DRAWS THE LINE BETWEEN SCANTILY-CLAD BALLET TROUPES. COUNSEL IS OFFERING THESE TO PROVE WHAT GOES ON IN THEATERS AND OTHER SUCH PERFORMANCES, AND I SUBMIT THAT THEY'RE IMMATERIAL AND IRRELEVANT ON THAT BASIS.

THE WITNESS: ARE YOU FAMILIAR --

MS. JAFFE: JUST A MOMENT.

MR. HERTZBERG: PLEASE.

THE HEARING OFFICER: LET THE ATTORNEYS ARGUE.

THE WITNESS: I'M SORRY.

MR. HERTZBERG: I'M OFFERING THESE TO SHOW THAT THE CONDUCT BEING COMPLAINED OF IN THIS DISCIPLINARY PROCEEDING IS NO DIFFERENT THAN THE CONDUCT IN THE SCANTILY-CLAD BALLETS, RIGHT DOWN THE MIDDLE IN LA RUE, AND THIS IS DIRECT EVIDENCE OF

THE SO-CALLED SCANTILY-CLAD BALLETS. THIS WITNESS HAS TESTIFIED AND MADE ALL THE COMPARISONS, AND NOW WE'VE GOT THE PICTURES. I CAN'T SEE WHAT THE OBJECTION IS.

MS. JAFFE: WELL, I HAVE PREVIOUSLY MADE MY ARGUMENT, AND I'M NOT GOING TO REPEAT IT AS TO WHAT INTERPRETATION SHOULD BE GIVEN TO THE FINDINGS IN LA RUE ON THIS POINT, THAT THERE IS A DISTINCTION BETWEEN THE TWO, AND HE'S ATTEMPTING TO OFFER THESE PHOTOGRAPHS OF BALLET GROUPS WHICH ARE, BY THE FACT THAT THEY ARE BALLET GROUPS AND NOT PERFORMANCES IN A PUBLIC PREMISES, IMMATERIAL AND IRRELEVANT AND DO NOT TEND TO PROVE OR DISPROVE ANY OF THE ISSUES IN THE ACCUSATION, AND I'LL SUBMIT IT AND MAKE REFERENCE TO MY PREVIOUS ARGUMENT.

THE HEARING OFFICER: THAT GOES BACK TO LA RUE AND GOES BACK TO THE RESPECTIVE OPINIONS OF LA RUE AND GOES BACK TO MY ORIGINAL RULING.

I WILL MARK THEM FOR IDENTIFICATION. YOU ARE OFFERING THEM FOR EVIDENCE. I WILL MARK THEM FOR IDENTIFICATION AND RESERVE RULING DEPENDING ON -- UNTIL AFTER ALL THE TESTIMONY.

MS. JAFFE: ALL RIGHT. THANK YOU.

THE HEARING OFFICER: THEY WILL BE RECEIVED COLLECTIVELY FOR IDENTIFICATION AS B OR 1-B.

(THE SAID EXHIBIT WAS MARKED
RESPONDENT'S EXHIBIT B
FOR IDENTIFICATION.)

THE WITNESS: MAY I ADD A WORD OF EXPLANATION ABOUT THIS GROUP OF PHOTOGRAPHS?

BY MR. HERTZBERG:

Q WELL, I'LL ASK YOU A QUESTION. MAY I PLEASE HAVE A

WORD OF EXPLANATION ABOUT THIS GROUP --

A THANK YOU.

MS. JAFFE: WELL, I OBJECT, AND I'M NOT EVEN GOING TO BOTHER TO STATE THE GROUNDS OF OBJECTION.

I THINK IT'S QUITE CLEAR AND APPARENT.

THE WITNESS: SOME OF THESE --

MS. JAFFE: NO, JUST A MOMENT, PLEASE.

THE HEARING OFFICER: THERE IS AN OBJECTION, AND I THINK THE QUESTION IS -- I'LL SUSTAIN THE OBJECTION.

MR. HERTZBERG: I'LL ASK YOU ANOTHER QUESTION.

MS. JAFFE: ALL RIGHT.

BY MR. HERTZBERG:

Q WITH REGARD TO THAT LAST GROUP YOU REFERRED TO, WOULD YOU EXPLAIN A LITTLE BIT FURTHER ABOUT WHAT THEY ARE DOING?

MS. JAFFE: OBJECTION, BROAD AND AMBIGUOUS. I OBJECT. COULD WE WAIT, PLEASE, FOR THE HEARING OFFICER TO RULE BEFORE --

THE HEARING OFFICER: YES, I'LL SUSTAIN THE OBJECTION.

MS. JAFFE: THANK YOU.

MR. HERTZBERG: I'D LIKE TO APPROACH THE WITNESS.

MS. JAFFE: ARE WE GOING TO HAVE AN AFTERNOON RECESS?

THE HEARING OFFICER: HOPEFULLY.

MR. HERTZBERG: MAY I APPROACH THE WITNESS?

THE HEARING OFFICER: WELL, DO YOU WANT A RECESS NOW?

MS. JAFFE: YES.

THE HEARING OFFICER: ALL RIGHT. LET'S TAKE A TEN-MINUTE RECESS NOW.

(WHEREUPON A SHORT RECESS WAS TAKEN, AFTER WHICH THE FOLLOWING PROCEEDINGS WERE HAD:)

THE HEARING OFFICER: YOU MAY PROCEED.

BY MR. HERTZBERG:

Q MISS CHASE, IN THOSE VARIOUS PICTURES REFERRED TO AND MARKED 2 FOR IDENTIFICATION IN EVIDENCE, RESPONDENT'S 2, THE --

THE HEARING OFFICER: B.

BY MR. HERTZBERG:

Q RESPONDENT'S B, WHERE DID THOSE VARIOUS DANCES OR BALLETS TAKE PLACE, IF YOU CAN TELL US?

A MOST OF THEM -- MOST OF THESE GROUPS AND GROUPS SIMILAR TO THEM, MODERN EXPERIMENTAL COMPANIES, MODERN DANCE COMPANIES, HAVE TAKEN PLACE EVERYWHERE, IN EUROPE, IN THE UNITED STATES, INDOORS, OUTDOORS, IN CELLARS, IN ATTICS, IN BARNS, IN ESTABLISHMENTS WHICH - ACCORDING TO YOUR TASTE - YOU COULD VARIOUSLY CALL NIGHTCLUBS, BARS, INNS, PLEASURE PALACES, THEATERS, CONCERT HALLS, AUDITORIA. THEY HAVE TAKEN PLACE ALL OVER.

THIS PARTICULAR GROUP THAT WAS RIGHT ON TOP TOOK PLACE IN THESE PHOTOGRAPHS AT THE VILLAGE GATE IN NEW YORK, WHICH IS AN ESTABLISHMENT WHICH SERVES ALCOHOLIC BEVERAGES DURING THE PERFORMANCE.

MS. JAFFE: ALL RIGHT. ON THIS BASIS AND CONSIDERING THE LAST STATEMENT OF THE WITNESS, I WOULD FURTHER OBJECT TO THE PHOTOGRAPHS THAT SHE HELD UP AS BEING THE ONE RELATIVE TO A

PREMISES LICENSED TO SELL ALCOHOLIC BEVERAGES ON ADDITIONAL GROUNDS AND THAT BEING THAT THIS IS WITHIN THE JURISDICTION OF NEW YORK, AND THEIR REGULATIONS AS TO WHAT IS PERMITTED IN LICENSED PREMISES IS NOT CONTROLLING UPON THE CALIFORNIA REGULATIONS AND, ALSO, THAT THERE IS NO SHOWING THAT THE LOCATION IN NEW YORK OPERATED IN A MANNER SIMILAR TO THE BODY SHOP.

THE HEARING OFFICER: I THINK WE'RE COMPARING DANCE IN GENERAL TO THE BODY SHOP, AND WHILE SHE DID MENTION IT WAS A LICENSED ESTABLISHMENT, I THINK THAT I'M AWARE OF THE VARIOUS VAST DIFFERENCES BETWEEN OTHER JURISDICTION'S VERSIONS OF LICENSED ESTABLISHMENTS IN CALIFORNIA.

I THINK WE ARE BASICALLY COMPARING DANCE, MODERN DANCE, VERSUS THE DANCES AS PERFORMED AT THE BODY SHOP. I'LL OVERRULE YOUR OBJECTION.

MR. HERTZBERG: YOUR WITNESS.

CROSS EXAMINATION

BY MS. JAFFE:

Q ALL RIGHT. RELATIVE TO THE PERFORMANCE IN NEW YORK AND ON TELEVISION, WAS THAT ON A CLOSED-CIRCUIT TELEVISION CHANNEL, OR WAS IT ON AN EDUCATIONAL TELEVISION CHANNEL, OR WAS IT ON THE PUBLIC, FEDERALLY-LICENSED COMMUNICATION CHANNEL?

A P.B.S., PUBLIC BROADCASTING SYSTEM.

Q AND DO YOU KNOW WHETHER OR NOT THERE WAS AN ADMONITION AT THE BEGINNING OF THE PERFORMANCE THAT THE DANCERS WOULD BE DANCING IN THE NUDE?

A I DON'T KNOW THAT. I CAN CHECK THE ARTICLE TO FIND THE ANSWER TO THAT.

Q AT THIS TIME, YOU DO NOT KNOW WHETHER OR NOT THE AUDIENCE WAS FOREWARNED AS TO THIS IN THE EVENT THAT SOME PERSONS MAY BE OFFENDED BY THE PERFORMANCE?

A I THINK THE ANSWER IS IN THE ARTICLE, IF YOU'D LIKE ME TO CHECK.

Q I'M ASKING YOUR KNOWLEDGE.

A I DON'T OFFHAND KNOW. I'D HAVE TO REFRESH MY MEMORY.

Q HAVE YOU AT ANY TIME EVER COME ACROSS ANY PERSONS WHO WERE OFFENDED BY THE DISPLAY OF PRIVATE PARTS IN PUBLIC?

A I'M NOT SURE I UNDERSTAND WHAT --

Q HAVE YOU EVER COME ACROSS PERSONS WHO WERE OFFENDED --

A YOU MEAN IN PUBLIC, OUTDOORS, OR IN A --

Q WELL, LET'S LIMIT IT THEN TO DANCES. HAVE YOU EVER COME ACROSS PERSONS WHO WERE OFFENDED BY THE DISPLAY OF PRIVATE PARTS IN DANCES?

A THEY WOULDN'T HAVE BEEN TO THE DANCE IF THEY WERE.

Q I'M ASKING --

A I'M SAYING NO, I HAVEN'T.

Q YOU HAVE NEVER COME ACROSS ANYONE WHO WAS OFFENDED BY THIS?

A AT A DANCE PERFORMANCE?

Q AT A DANCE PERFORMANCE.

A NO.

Q ALL RIGHT. HAVE YOU QUESTIONED THE AUDIENCE TO DETERMINE WHETHER OR NOT SOME PERSONS WERE SO OFFENDED?

A I HAVE NOT.

Q ALL RIGHT. NOW, YOU TESTIFIED RELATIVE TO THE COMMUNICATIVE ASPECTS OF THE DANCE AT THE BODY SHOP AND THAT OF

BALLET. WERE THE COMMUNICATIVE ASPECTS OF THESE DANCES BEING BASED UPON THE PERSONAL REACTION OF THE PATRON-OBSERVER?

A I DON'T UNDERSTAND.

Q ALL RIGHT. IS IT TRUE THAT WHETHER OR NOT A PERSON DETERMINES THE COMMUNICATION VALUE OF A DANCE BASED UPON THEIR PERSONAL PREFERENCES AND VALUES?

A COMMUNICATION IS SOMETHING THAT TAKES PLACE BETWEEN TWO PEOPLE. IT CAN'T ALL BE WITHIN ONE PERSON OR THE OTHER.

Q CAN YOU ANSWER THE QUESTION?

A WELL, MY ANSWER -- WOULD YOU REPHRASE IT?

MS. JAFFE: ALL RIGHT. COULD I REQUEST THAT THE QUESTION BE READ BACK TO THE WITNESS?

THE HEARING OFFICER: WOULD YOU PLEASE RE-READ THE QUESTION?

(THE QUESTION WAS READ BY THE REPORTER.)

THE WITNESS: I DON'T UNDERSTAND THE QUESTION.

BY MS. JAFFE:

Q IS IT TRUE THAT A PERSON WILL DETERMINE WHETHER OR NOT A DANCE HAS A COMMUNICATIVE VALUE BASED UPON THE OBSERVER'S PERSONAL PREFERENCES AND VALUES?

A I STILL DON'T UNDERSTAND IT. I COULD EXPLAIN WHAT IT IS SPECIFICALLY THAT I DON'T UNDERSTAND.

Q ALL RIGHT. YOU TESTIFIED RELATIVE TO THE ESTHETIC VALUE OF VARIOUS DANCES THAT YOU OBSERVED; IS THAT TRUE?

A I DID NOT MAKE ANY ESTHETIC JUDGMENTS.

Q ALL RIGHT. DID YOU TESTIFY THAT CERTAIN DANCES HAVE ESTHETIC VALUES?

A YES.

Q ALL RIGHT. DID YOU MAKE THE CONCLUSION BASED UPON YOUR PERSONAL VALUES AND EXPERIENCES?

A YOU ALREADY ASKED ME THAT QUESTION, AND I ANSWERED IT EARLIER.

Q DID YOU -- WELL, THIS IS CROSS EXAMINATION. I WILL PUT THE QUESTION TO YOU AGAIN. DID YOU TESTIFY THAT DANCES HAD AN ESTHETIC VALUE BASED UPON YOUR PERSONAL EXPERIENCES AND VALUES?

A ON THAT AND, IN ADDITION, THE EXPERIENCES AND VALUES OF THE THEATER COMMUNITY WHICH I HAVE SURVEYED AND RESEARCHED.

Q ALL RIGHT. WOULD YOU SAY IT IS CORRECT THAT A PERSON WHO OBSERVES A DANCE EVALUATES ITS COMMUNICATIVE VALUE BASED UPON THE OBSERVER'S PERSONAL EXPERIENCE AND VALUES?

A HE JUDGES ITS VALUE BY HIS VALUES?

Q YES.

A YES.

Q THANK YOU.

A IF I UNDERSTOOD THAT.

Q ALL RIGHT. NOW, PLEASE INDICATE IF YOU DON'T UNDERSTAND THE QUESTION.

NOW, IT IS TRUE THAT MOST OF THE THEATERS THAT YOU HAVE THE ILLUSTRATIONS FROM, WHICH ARE MARKED FOR IDENTIFICATION AS RESPONDENT'S EXHIBIT B, ARE OPERATED PRIMARILY AS THEATERS AND NOT AS BARS AND TAVERNS?

A THESE ARE NOT THEATERS. THEY ARE THEATRICAL GROUPS WHICH PERFORM IN VARIOUS ESTABLISHMENTS.

Q AND THE PRIMARY PURPOSE OF THESE ESTABLISHMENTS IS TO

PRESENT THEATRICAL PERFORMANCES?

A NOT ALL OF THEM. SOME OF THEM. FOR EXAMPLE, THEY HAVE PERFORMED IN LECTURE HALLS.

Q ALL RIGHT.

A THE PRIMARY PURPOSE OF THE LECTURE HALL IS TO PRESENT LECTURES.

Q ALL RIGHT. WOULD YOU SAY IT IS TRUE THAT THE MAJORITY OF THE LOCATIONS FROM WHICH THESE ILLUSTRATIONS WERE TAKEN WERE OPERATED AS A PLACE WHEREIN AT THE TIME OF THEIR PERFORMANCE THE PRIMARY FUNCTION WAS, IN FACT, TO PRESENT THIS PERFORMANCE AND NOTHING ELSE?

A NO.

Q ALL RIGHT. DO YOU KNOW WHETHER OR NOT THERE IS DIFFERENT LICENSING REQUIREMENTS FOR A THEATER AS OPPOSED TO A TAVERN?

A NO, I DO NOT.

Q DID YOU ASK ANY OF THE PERFORMERS THAT YOU OBSERVED IN THE BODY SHOP WHETHER OR NOT THEY HAD ANY FORMAL TRAINING IN DANCE?

A I WAS TOLD THE BACKGROUND OF SOME OF THE PERFORMERS. I THINK THAT WAS IN RESPONSE TO A QUESTION OF MINE, BUT IT MAY HAVE JUST BEEN VOLUNTEERED.

I DON'T REMEMBER. IT WAS OVER A YEAR AGO.

Q ALL RIGHT. THANK YOU.

DID YOU SEE ANY MOVEMENT -- STRIKE THAT. ARE YOU FAMILIAR WITH THE TERM "BUMP AND GRIND"?

A YES, I AM.

Q AND DID THAT BECOME ASSOCIATED PRIMARILY WITH SO-

CALLED BURLESQUE ENTERTAINMENT?

A IN COMMON PARLANCE, YES.

Q AND YOU ARE FAMILIAR WITH THE MOVEMENTS THAT GO IN TO MAKE UP THE SO-CALLED BUMP AND GRIND?

A YES, I AM.

Q DID YOU SEE ANY MOVEMENTS THAT WERE THE SAME AS OR SIMILAR TO THE BUMP AND GRIND IN THE PERFORMANCES THAT YOU OBSERVED AT THE BODY SHOP?

A YES.

Q AND DID ALL THE PERFORMERS AT ONE TIME OR ANOTHER IN THE BODY SHOP DEMONSTRATE A BUMP AND GRIND?

A MAY I BE ALLOWED TO DEFINE -- GIVE MY DEFINITION SO WE KNOW WE ARE SPEAKING OF THE SAME THING?

Q YES. WOULD YOU ANSWER MY QUESTION FIRST?

A WOULD YOU REPEAT THE QUESTION?

Q DID ALL THE DANCERS THAT YOU OBSERVED IN THE BODY SHOP AT ONE TIME OR ANOTHER DEMONSTRATE BY THEIR MOVEMENTS WHAT IS SO-CALLED AS A BUMP AND GRIND?

A TO SOME DEGREE, MORE OR LESS, YES AND NO.

Q COULD YOU ANSWER THE QUESTION?

A I CAN'T ANSWER IT WITH A SIMPLE YES OR NO.

MR. HERTZBERG: THE WITNESS WANTS TO EXPLAIN HER ANSWER. I THINK --

MS. JAFFE: ALL RIGHT.

THE WITNESS: BECAUSE OF THE NATURE OF THE DEFINITION --

BY MS. JAFFE:

Q ALL RIGHT. JUST A MOMENT, PLEASE. WOULD YOU DEFINE

HOW BUMP AND GRIND?

A A GRIND IS SIMPLY A CIRCULAR ROTATION OF THE HIPS. IT'S FOUND IN ALL OF THESE DANCE GROUPS AS WELL AS THE DANCERS IN THE BODY SHOP, FOR EXAMPLE. NOW, BUMP IS SIMPLY A FORWARD THRUST OF THE PELVIS.

Q NOW, ARE THESE TWO MOVEMENTS SOMETIMES DONE ONE RIGHT AFTER THE OTHER?

A I DON'T KNOW.

Q ARE THEY SOMETIMES?

A THEY COULD BE. THEY COULD BE.

Q ARE THEY DONE THAT WAY IN BURLESQUE?

A I DON'T KNOW THAT I'VE EVER SEEN CLASSICAL BURLESQUE.

Q DID YOU SEE THE DANCERS IN THE BODY SHOP PERFORM THOSE MOVEMENTS?

A NOT CONSECUTIVELY AS YOU DESCRIBED, NO. JUST IN THE COURSE OF DANCING, THEY ROTATED THEIR HIPS AND SOME OF THEIR MOTIONS THEY HAPPENED TO HAVE THEIR PELVIS THRUST FORWARD.

Q ALL RIGHT. IT'S TRUE THAT "OH, CALCUTTA", TO YOUR KNOWLEDGE, WAS NOT PERFORMED IN A BAR?

A I DON'T KNOW THAT THAT'S TRUE.

Q ALL RIGHT. IS IT TRUE THAT THE NUDE SCENE IN "HAIR" LASTED APPROXIMATELY TWENTY SECONDS?

A NO.

Q IS IT TRUE THAT THE NUDE SCENE IN "HAIR" WAS DONE UNDER SUBSTANTIALLY DIMMED LIGHTS?

A NO.

Q DID YOU SEE ALL PERFORMANCES OF "HAIR"?

A NO.

Q DID YOU SEE THE PERFORMANCE IN LOS ANGELES AT THE AQUARIUS THEATER?

A NO.

Q THEN YOU DON'T KNOW WHETHER OR NOT THOSE PERFORMANCES INCLUDED A VERY DIMLY LIGHTED STAGE AND A TWENTY-SECOND, OR APPROXIMATELY TWENTY-SECOND, NUDE SCENE?

A I SAW SPOTS FROM THE PERFORMANCES ON TELEVISION.

Q AND -- ALL RIGHT. FINE. THANK YOU. NOW, WAS THIS JOFFREY BALLET PERFORMED IN ANY BARS?

A I DON'T KNOW THE ANSWER TO THAT.

Q NOW, YOU STATED CERTAIN REMARKS REGARDING A MR. NIKOLAIS.

A NIKOLAIS.

Q NIKOLAIS, THANK YOU. AND YOU STATED THAT MR. NIKOLAIS SOMETIMES USED COSTUMES IN HIS PERFORMANCES. YOU MADE REFERENCE TO COSTUMING A PERFORMER AS A BOTTLE, OR SOMETHING OF THIS SORT?

A AN OBJECT.

Q OR AN OBJECT, IF YOU PLEASE.

ALL RIGHT. DID THE COSTUMES THAT HE USED COVER THE PRIVATE PARTS ON THOSE OCCASIONS?

A SOME OF THE PERFORMERS IN THOSE OCCASIONS WERE NUDE. OTHERS WERE COSTUMED AS OBJECTS.

Q DID MR. NIKOLAIS IN CALIFORNIA EVER PRESENT HIS PRODUCTIONS IN BARS?

A I DON'T KNOW THAT HE'S EVER PRESENTED PRODUCTIONS IN CALIFORNIA.

Q IS IT TRUE THAT THE PERFORMANCES RELATIVE TO NUDITY AND SEXUAL DISPLAYS IN EUROPE, AFRICA, AND CERTAIN PARTS OF ASIA, ARE DIFFERENT THAN WHAT IS GENERALLY PERFORMED IN THE UNITED STATES?

A WOULD YOU REPEAT THE QUESTION, PLEASE?

Q IS IT TRUE THAT PERFORMANCES IN EUROPE, AFRICA, AND CERTAIN PARTS OF ASIA, AND ALSO THE MIDDLE EAST, ARE DIFFERENT FROM THE SEXUAL PERFORMANCES THAT ARE GIVEN IN THE UNITED STATES?

A WHAT IS A SEXUAL PERFORMANCE?

MS. JAFFE: MR. HEARING OFFICER, APPARENTLY THERE IS A PROBLEM HERE WITH THE WITNESS. I WOULD REQUEST THAT IF SHE DOESN'T UNDERSTAND THE QUESTION, SO INDICATE, AND I WILL ATTEMPT TO REPHRASE.

THE HEARING OFFICER: IF YOU DON'T UNDERSTAND THE QUESTION, SAY -- ADVISE THE QUESTION THAT YOU DO NOT UNDERSTAND AND WHAT YOU DON'T UNDERSTAND ABOUT IT.

THE WITNESS: I DO NOT UNDERSTAND THE TERM "SEXUAL PERFORMANCE". IS THAT WHAT YOU SAID?

BY MS. JAFFE:

Q ALL RIGHT. FINE.

YOU HAVE STUDIED IN THE SORBONNE, HAVE YOU NOT?

A YES.

Q NOW, DID YOU FIND WHEN YOU WERE IN PARIS THAT THERE WAS A DIFFERENT STANDARD OF WHAT WAS ACCEPTABLE RELATIVE TO NUDITY IN PUBLIC IN PARIS AS OPPOSED TO WHAT YOU WOULD FIND IN, LET'S SAY, ORANGE COUNTY?

A ARE YOU TALKING ABOUT LEGAL DISTINCTIONS?

Q NO, JUST IN GENERAL, IN THE PERFORMANCE. IN OTHER WORDS, WOULD YOU SEE, FOR EXAMPLE, DISPLAYS IN PARIS THAT YOU WOULD NOT SEE IN CALIFORNIA?

A I DON'T THINK THERE IS ANYTHING YOU WOULD SEE IN PARIS THAT YOU WOULD NOT ALSO SEE IN LOS ANGELES, BUT I COULD ALSO SAY THAT THERE ARE SUBURBS IN PARIS THAT ARE VERY MUCH LIKE ORANGE COUNTY.

Q THEN IT IS YOUR OPINION THAT WHAT IS GENERALLY ACCEPTED IN PARIS IN TERMS OF ENTERTAINMENT AND THE DISPLAYS ENTAILED IN THE ENTERTAINMENT IN PARIS WOULD BE ACCEPTABLE IN CALIFORNIA?

A I DON'T KNOW. I HAVEN'T EXHAUSTIVELY RESEARCHED IT.

Q FINE. THEN YOU DO NOT KNOW IF THERE IS A DIFFERENT STANDARD IN EUROPE RELATIVE TO PERFORMANCES AS OPPOSED TO CALIFORNIA?

A I WOULD HAVE TO SAY I DON'T UNDERSTAND THE QUESTION.

MR. HERTZBERG: I WAS GOING TO OBJECT. I DON'T UNDERSTAND IT EITHER.

THE WITNESS: ARE YOU TALKING ABOUT A DIFFERENT LEVEL OF TASTE BETWEEN THE COUNTRIES OR MORALS OR DIFFERENT MORAL STRUCTURE OR WHAT?

BY MS. JAFFE:

Q JUST WHAT IS ACCEPTABLE.

A WELL, EACH -- SOMETHING ACCEPTABLE TO ME IS NOT ACCEPTABLE TO YOU. I CAN'T ANSWER THAT.

Q ALL RIGHT. I WON'T PURSUE THAT LINE FURTHER.

MAYOR M.: I HAVE TO CONSULT MY NOTES AT THIS POINT.

YES, I'M READY TO PUT THE NEXT QUESTION TO THE WITNESS.

THE HEARING OFFICER: CONTINUE.

BY MS. JAFFE:

Q HAVE YOU EVER HAD ANY EXPERIENCE IN PUTTING ON PERFORMANCES IN BARS YOURSELF?

A YES, I HAVE.

Q AND DID ANY OF THESE PERFORMANCES INVOLVE NUDE ENTERTAINMENT?

A YES.

Q ALL RIGHT. AND IN WHAT BARS WERE THESE?

A I ACTED IN AN ADVISORY CAPACITY FOR PETER ROONEY IN LOS ANGELES, WHO WAS DESIGNING A THEATER WHICH SOME WOULD ALSO CALL A BAR, BECAUSE HE WAS PLANNING TO SERVE ALCOHOLIC BEVERAGES DURING THE PERFORMANCE.

I ADVISED HIM AS TO WHAT I THOUGHT WOULD BE AN APPROPRIATE PHYSICAL STRUCTURE FOR THE THEATER. I ALSO ADVISED HIM AS TO THE RELATIONSHIP OF THE ALCOHOL AND THE ENTERTAINMENT. I ADVISED HIM THAT, IN MY PERSONAL OPINION, IT WOULD BE BETTER TO SERVE ALCOHOL BETWEEN THE PERFORMANCES RATHER THAN DURING THE PERFORMANCES SIMPLY AS A WAY OF SHOWING RESPECT FOR THE PERFORMANCE AND DEMONSTRATING THAT THE PERFORMANCE CAME FIRST AND WAS THE PRIMARY FUNCTION OF THE THEATER SO AS NOT TO DISTRACT ATTENTION FROM THE PERFORMANCE.

Q DO YOU DISTINGUISH BETWEEN A BAR AND A THEATER?

A DO I DISTINGUISH?

Q YES.

A NO, NOT IN THE LARGE SENSE, NO.

Q IT'S TRUE THAT AT THE BODY SHOP ALCOHOLIC BEVERAGES ARE SERVED CONTINUOUSLY?

A I -- EXCUSE ME. I ANSWERED THAT LAST QUESTION INCORRECTLY. TO MY UNDERSTANDING - AND I HAD TO GO TO DICTIONARIES IN ORDER TO FIND OUT. THE ANSWER TO THIS - A BAR IS A PLACE THAT SERVES ALCOHOLIC BEVERAGES. A BAR DOES NOT NECESSARILY HAVE A STAGE.

Q IS IT YOUR OPINION THAT THE MERE ADDITION OF A STAGE TURNS A BAR INTO A THEATER?

A NO.

Q IT IS TRUE THAT AT THE BODY SHOP ALCOHOLIC BEVERAGES, TO YOUR KNOWLEDGE, ARE SERVED CONTINUOUSLY THROUGH THE PERFORMANCE OF THE DANCERS?

A I BELIEVE SO.

Q DID YOU OBSERVE THIS WHEN YOU WERE THERE?

A YES.

Q WERE YOU PAID A FEE TO TESTIFY HERE TODAY?

A YES.

Q AND WERE YOU PAID A FEE CONTINGENT UPON YOUR EXPERTISE IN THE FIELD?

A I DON'T UNDERSTAND YOUR QUESTION.

Q WELL, WAS YOUR FEE BASED IN PART ON THE FACT THAT YOU HAVE A CERTAIN AMOUNT OF EXPERIENCE IN THE FIELD OF DANCE?

A YES.

Q AND WAS YOUR FEE IN EXCESS OF THE STATUTORY WITNESS FEE?

A I DO NOT KNOW WHAT THE STATUTORY WITNESS FEE IS.

I CAN'T ANSWER THAT.

Q HAVE YOU APPEARED FOR THE RESPONDENT, PAUL RICHTER AND ASSOCIATES, INC., IN OTHER CASES WHEREIN YOU TESTIFIED IN THE FIELD OF THEATER AND WERE -- WAS PAID AN EXPERT WITNESS FEE?

A I TESTIFIED BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD LAST YEAR ON DECEMBER 20TH, RIGHT HERE IN THIS ROOM.

Q ALL RIGHT. DID YOU TESTIFY IN FRONT OF ANY OTHER TRIBUNALS FOR PAUL RICHTER AND ASSOCIATES?

A NO.

Q HAVE YOU EVER PERSONALLY OBSERVED ANY NUDE DANCING ON THE PUBLIC TELEVISION CHANNELS IN THE UNITED STATES?

A NO.

Q IS THE PICTURE WHICH IS PART OF EXHIBIT B FOR RESPONDENT FOR I.D. RELATIVE TO THE TV SHOWING THE ONLY INSTANCES THAT YOU KNOW OF THAT NUDE PERFORMERS APPEARED ON AMERICAN TELEVISION?

A NO, I HAVE HEARD OF OTHER INSTANCES.

Q HOW MANY OTHER INSTANCES HAVE YOU HEARD OF?

A VARIOUS STAGE PLAYS THAT HAVE BEEN REBROADCAST ON TELEVISION HAVE INVOLVED NUDITY. "MARAT-SADE", FOR EXAMPLE, INVOLVES A PERFORMER GETTING UP -- I'M SORRY. VARIOUS STAGE PLAYS THAT HAVE BEEN REBROADCAST ON TELEVISION HAVE INVOLVED NUDITY, AND THESE -- "MARAT-SADE" WAS -- YOU ASKED ME FOR INSTANCES. "MARAT-SADE" IS ONE INSTANCE IN WHICH A PERFORMER IS TOTALLY NUDE. IT WAS A MALE WALKING AWAY FROM THE CAMERA, SO THERE WAS NO FRONTAL VIEW, BUT YOU DID SEE THE PERFORMER NUDE.

Q AND "MARAT-SADE", I BELIEVE, REFERS TO A VERY --

STRIKE THAT.

THE "MARAT-SADE" PERFORMANCE WAS THE CLASSICAL "MARAT-SADE" OF THE MARQUIS DE SADE THING?

A OH, NO. IT'S THE FAMOUS STAGE PLAY BY BRITON'S PLAYWRIGHT PETER WISE.

Q AND THIS INVOLVED A PLAY AND NOT A BAR?

A PARDON ME?

Q THIS INVOLVED A PLAY AND NOT A BAR?

A YES, IT WAS A PLAY.

Q WOULD YOU SAY THAT NUDE DANCERS ARE UNUSUAL AS OPPOSED TO A COMMON OCCURRENCE AMONG DANCE PERFORMANCES?

A NO, I WOULD NOT.

Q WOULD YOU SAY THAT NUDE DANCERS ARE COMMON IN CLASSICAL BALLET?

A YES, BUT NOT IN THE BALLET OF THIS COUNTRY.

Q ALL RIGHT. WELL, OKAY. LET ME QUALIFY THIS BY SAYING I'M DIRECTING MY QUESTION TO THE UNITED STATES.

IN THE UNITED STATES, WOULD YOU SAY THAT NUDE DANCERS IN CLASSICAL BALLET ARE COMMON?

A THERE IS NOT TRADITION OF CLASSICAL BALLET IN THE UNITED STATES.

Q ASSUMING THERE WAS, TAKING INTO CONSIDERATION THE SADLER'S BALLET COMPANY AND OTHERS -- WELL, STRIKE THAT.

MR. HEPTZBERG: THANK YOU. YOU SATISFIED AN OBJECTION.

BY MS. JAFFE:

Q OF THE CLASSICAL BALLET PERFORMANCES THAT YOU HAVE SEEN IN THE UNITED STATES, DID YOU OBSERVE NUDE BALLET DANCERS?

A NO.

Q HAVE YOU OBSERVED SO-CALLED FOLK DANCING IN THE UNITED STATES?

A YES.

Q AND HAVE YOU OBSERVED ANY FOLK DANCING IN THE UNITED STATES PERFORMED IN THE NUDE?

A NO.

Q HAVE YOU OBSERVED SQUARE DANCING IN THE UNITED STATES?

A ARE YOU REFERRING TO AMERICAN FOLK DANCING?

Q YES.

A YES, I HAVE OBSERVED SQUARE DANCING.

Q ALL RIGHT. HAVE YOU OBSERVED SQUARE DANCING IN THE UNITED STATES PERFORMED IN THE NUDE?

A NO.

Q HAVE YOU OBSERVED TAP DANCING IN THE UNITED STATES?

A YES.

Q HAVE YOU OBSERVED --

A NO.

Q WELL, LET THE RECORD REFLECT THAT MY NEXT QUESTION WOULD HAVE BEEN HAVE YOU EVER OBSERVED TAP DANCING IN THE NUDE IN THE UNITED STATES?

A YES, MY DAUGHTER.

Q ALL RIGHT. I WON'T ASK THE NEXT QUESTION.

ALL RIGHT. NOW, LET'S SEE. I'VE COVERED SO FAR FOLK, SQUARE, BALLET AND TAP DANCING. WHAT OTHER GENERAL CATEGORIES OR TYPES OF DANCING ARE THERE?

A YOU'VE DONE VERY WELL. WHY DON'T YOU JUST CONTINUE?

Q WELL, I'M ASKING THE QUESTION NOW. CAN YOU ANSWER?

A NO.

Q ALL RIGHT. NOW, LET ME AGAIN ASK YOU IS IT TRUE THAT IN THE UNITED STATES, EXCLUDING SO-CALLED MODERN DANCING, THAT NUDE DANCING IS UNUSUAL OR RARE AS OPPOSED TO COMMON?

A MODERN DANCING IS THE MAJOR FORM OF DANCE IN THE UNITED STATES, SO I COULDN'T, UNDER ANY CIRCUMSTANCES, CALL IT UNUSUAL OR RARE.

Q WELL, INCLUDING MODERN DANCING, THEN, AND DIRECTING YOUR ATTENTION TO THE OTHER FORMS OF DANCING, COULD YOU TELL US WHETHER OR NOT NUDE DANCING IS RARE AS OPPOSED TO A COMMON OCCURRENCE?

A ARE YOU REFERRING TO COUNTRY-WIDE, INCLUDING HICKSVILLE, BIG CITIES?

Q ALL RIGHT. LET'S LIMIT THE QUESTION THEN TO CALIFORNIA.

A IT'S NOT AN UNUSUAL OCCURRENCE IN CALIFORNIA, NO.

Q ALL RIGHT. MY QUESTION IS WOULD YOU TELL US, CONSIDERING THE DIFFERENT FORMS OF DANCING, WHETHER OR NOT NUDITY IN DANCING IS RARE AS OPPOSED TO A COMMON OCCURRENCE?

A I DON'T UNDERSTAND THE TERMS YOU'RE USING.

Q ALL RIGHT. DO YOU KNOW WHAT THE MEANING OF "RARE" IS?

A YES.

Q ALL RIGHT. DO YOU KNOW WHAT THE MEANING OF "COMMON OCCURRENCE" IS?

A YES.

Q ALL RIGHT. NOW --

A I DON'T KNOW YOUR FRAME OF REFERENCE AT ALL.

Q WELL, AGAIN, WE'RE IN AN UNUSUAL SITUATION WHERE I FIND THE WITNESS QUESTIONING THE EXAMINER.

HOWEVER, I'LL TRY TO BE PATIENT.

THE HEARING OFFICER: NO, SHE -- SHE INDICATED SHE DIDN'T UNDERSTAND.

BY MS. JAFFE:

Q ALL RIGHT. WELL, LET ME TRY AGAIN. IN CALIFORNIA, CONSIDERING ALL THE DIFFERENT TYPES OF DANCING, IS IT TRUE THAT NUDITY IN THE DANCE IS RARE AS OPPOSED TO COMMON OR ORDINARY?

A IF YOU ARE REFERRING TO DANCES IN PUBLIC ESTABLISHMENTS --

Q YES, LET'S LIMIT IT TO PUBLIC ESTABLISHMENTS.

A AT HOME, I DANCE AROUND NUDE A LOT, AND I ASSUME MAYBE THE MAJORITY OF THE POPULATION DOES AT ONE TIME OR ANOTHER. IT MAY BE EXTREMELY COMMON.

Q THIS IS ALL VERY INTERESTING, BUT THE HOUR IS GROWING LATE.

WOULD YOU LIKE MY QUESTION REPEATED TO YOU?

A. YES.

MS. JAFFE: COULD WE HAVE THE REPORTER READ BACK THE QUESTION?

THE HEARING OFFICER: WOULD YOU READ THE QUESTION, PLEASE?

(THE QUESTION WAS READ BY THE REPORTER.)

MR. HERTZBERG: I WILL OBJECT TO THE QUESTION ON THE GROUNDS THAT IT'S AMBIGUOUS.

THE HEARING OFFICER: WASN'T THE QUESTION IN CALIFORNIA?

MS. JAFFE: YES.

THE HEARING OFFICER: I DIDN'T HEAR IT READ BACK, BUT MY NOTES -- AS I UNDERSTAND IT, YOU WERE CONFINING IT TO CALIFORNIA

MS. JAFFE: YES.

THE HEARING OFFICER: ALL RIGHT. YOU OBJECT?

MR. HERTZBERG: I OBJECT. IT'S AN AMBIGUOUS QUESTION.

THE HEARING OFFICER: OVERRULED.

THE WITNESS: ALL RIGHT. THERE IS ONLY ONE WAY I CAN ANSWER IT, AND THAT WOULD BE TO SAY THAT IN PUBLIC APPEARANCES, IN PUBLIC PLACES, YOU MORE OFTEN SEE DANCERS DANCE CLOTHED THAN UNCLOTHED, BUT I WOULD BY NO MEANS CALL IT UNUSUAL IN CALIFORNIA, NUDE DANCING.

BY MS. JAFFE:

Q WOULD YOU TELL US HOW MANY TIMES YOU WERE AT THE BODY SHOP?

A I WAS AT THE BODY SHOP ON ONE OCCASION.

Q ALL RIGHT. HOW LONG DID YOU SPEND AT THE BODY SHOP?

A I STAYED FOR THREE DANCERS, TWO ROUNDS EACH. HOW LONG WOULD THAT BE?

Q LET US HAVE YOUR KNOWLEDGE, PLEASE.

A I WOULD GUESS ABOUT HALF AN HOUR TO FORTY-FIVE MINUTES.

Q AND DID YOU SEE ALL THE GIRLS SCHEDULED TO DANCE THAT NIGHT?

A NO.

Q DID YOU CONTACT ANYONE CONNECTED WITH THE PREMISES WHEN YOU ARRIVED AT THE LOCATION?

A NO.

Q ALL RIGHT. DID YOU SAY "HELLO" OR GREET ANYONE AT THE PREMISES WHEN YOU ARRIVED THERE?

A I DON'T RECALL THAT I MET ANYONE UNTIL AFTER I WATCHED THE PERFORMANCES.

Q ALL RIGHT. DID YOU MAKE YOUR PRESENCE KNOWN WHEN YOU ENTERED THE PREMISES?

A NO.

Q ALL RIGHT. WERE YOU THERE BY PREARRANGED APPOINTMENT?

A I BELIEVE THE ESTABLISHMENT KNEW I WAS GOING TO BE THERE, BUT I DON'T KNOW THAT THEY KNEW WHAT NIGHT OR WHAT TIME.

Q ALL RIGHT. DO YOU KNOW WHETHER OR NOT ANYONE CONNECTED WITH THE OPERATION OF THE PREMISES ADVISED THE DANCERS THAT YOU WERE THERE TO OBSERVE THEM ON THE OCCASION YOU WERE THERE?

A NOT THAT I KNOW OF.

Q DID YOU HAVE ANY CONVERSATION WHATSOEVER WITH THE DANCERS?

A I DON'T RECALL.

Q DID YOU ASK ANY OF THEM WHETHER OR NOT THEY PERFORMED ON THE OCCASION YOU WATCHED THEM IN A SIMILAR MANNER AS THEY PERFORMED ON OTHER OCCASIONS IN THE PREMISES?

A NO, I'M SURE I DISCUSSED THAT WITH MR. RICHTER LATER.

Q ARE ALL BALLET PERFORMANCES IN THE NUDE?

A WHAT?

Q ARE ALL BALLET PERFORMANCES IN THE NUDE?

A NO.

Q THIS IS CONSIDERING ALL FORMS OF BALLET. WHAT PROPORTION OF BALLET PERFORMANCES WOULD YOU SAY, CONSIDERING ALL TYPES OF BALLET, ARE PERFORMED IN THE NUDE?

A I CAN'T ANSWER THAT SPECIFICALLY. I'VE ALREADY SAID THAT I BELIEVE THE MAJORITY OF DANCE PERFORMANCES ARE PERFORMED CLOTHED.

Q THANK YOU. WERE ALL THE DANCERS THAT YOU OBSERVED IN THE PREMISES CALLED THE BODY SHOP NUDE?

A YES.

Q WHAT WAS THAT QUESTION AGAIN?

MS. JAFFE: WERE ALL DANCERS IN THE PREMISES THAT YOU OBSERVED IN THE BODY SHOP IN THE NUDE?

THE HEARING OFFICER: THE ANSWER WAS YES.

BY MS. JAFFE:

Q WHAT PARTICULAR COMMUNICATION IS MEANT BY THE FACT THAT THE DANCERS WERE NUDE IN THE BODY SHOP?

A I DON'T THINK --

MR. HERTZBERG: WHAT -- COULD WE HAVE THAT QUESTION RE-READ? I DON'T THINK I UNDERSTAND.

THE HEARING OFFICER: WOULD YOU RE-READ THE QUESTION, PLEASE?

(THE QUESTION WAS READ BY THE REPORTER.)

THE WITNESS: I CAN ANSWER THAT WITH REFERENCE TO ALWIN NIKOLAIS AGAIN, THE FAMOUS CHOREOGRAPHER, BECAUSE HE WAS ASKED THE SAME QUESTION.

HE SAID WHY DO YOU WANT YOUR DANCERS TO BE NUDE?

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HIS ANSWER WAS THAT HE FELT THAT CLOTHES, PARTICULARLY SEEN FROM UP CLOSE, WERE JARRING AND DISJUNCTIVE IN THE OBSERVANCE OF THE HUMAN BODY; THEY CUT THE LINES OF THE BODY IN AN UNESTHETIC WAY.

BY MS. JAFFE:

Q IS THAT THE ONLY COMMUNICATIVE VALUE, IN YOUR OPINION, IN THE NUDITY OF THE DANCERS?

A NOT AT ALL, NO.

MR. HERTZBERG: DO YOU WANT TO FINISH THE ANSWER?

BY MS. JAFFE:

Q DOES THE DISPLAYING OF PUBIC HAIR, PER SE, ENHANCE THE DANCE AS YOU OBSERVED PERFORMED IN THE BODY SHOP?

A NO MORE OR LESS THAN THE DISPLAYING OF THE FACE.

Q ALL RIGHT, AND, IN YOUR OPINION, THE ESTHETIC VALUE OF NUDITY IS THE FACT THAT THE HUMAN FORM IS NOT SO-CALLED, AS YOU PUT IT, CUT BY THE LINES OF CLOTHING?

A I SAID THAT WAS ONE OF THE THINGS, AND YOU DIDN'T ALLOW ME TO CONTINUE.

Q ALL RIGHT. PLEASE LET US HAVE THE OTHER THINGS.

A ONLY IF YOU REALLY WANT IT. I JUST SAID THAT WAS NOT THE ONLY VALUE.

Q LET US HAVE THE OTHER VALUES, PLEASE.

A IN MY OPINION, THERE ARE OTHER VALUES TO NUDITY RATHER THAN COSTUMING.

ONE IS THE FREEDOM THE DANCER FEELS UNENCUMBERED BY CLOTHING, VARIOUS KINDS OF ELASTIC OR STRAPS OR CONTRAPTIONS

WHATSOEVER. THIS IS THE REASON ~~THAT~~ DANCE HAS BEEN LOOSELY CLOTHED, SCANTILY CLAD. IT'S THE REASON IN MODERN DANCE THAT THERE HAS BEEN A REVERSION TO NUDITY, TO FREE THE BODY, TO FREE THE DANCER, TO EXPRESS MORE PERFECTLY THE DANCE.

Q IS IT TRUE, MISS CHASE, THAT LEOTARDS WERE SPECIFICALLY DESIGNED TO REVEAL THE LINES OF THE BODY AND ALSO ENABLE THE PERFORMERS TO HAVE FREEDOM OF MOVEMENT?

A YES.

Q AND IS IT ALSO TRUE THAT SOME OF THE MOST ACCLAIMED AND TALENTED DANCERS PERFORM IN LEOTARDS?

A YES, THEY ALSO PERFORM NUDE, THOSE SAME DANCERS. I'VE WORN LEOTARDS --

Q I BELIEVE THERE IS NO QUESTION PENDING. THANK YOU VERY MUCH.

MR. HERTZBERG: DID YOU WANT TO EXPLAIN YOUR ANSWER, MISS CHASE?

THE WITNESS: I'M SAYING EVEN A LEOTARD, AS MUCH AS IT DOES REVEAL THE LINES OF THE BODY, STILL IS A GARMENT WHICH ENCUMBERS THE DANCER BECAUSE OF THE ELASTIC AROUND THE WAISTBAND. IT'S VERY UNCOMFORTABLE.

BY MS. JAFFE:

Q COULD THE ELASTIC BE REDESIGNED TO BE NOT AS UNCOMFORTABLE?

MR. HERTZBERG: WE'RE NOT IN THE GARMENT BUSINESS. I'LL OBJECT ON THAT BASIS.

THE HEARING OFFICER: I'LL SUSTAIN THAT OBJECTION.

MS. JAFFE: OKAY.

Q WERE YOU PRESENT AT ANY OF THE TESTIMONY GIVEN AT THE SO-CALLED RULES HEARING THAT WAS ENACTED IN SACRAMENTO PRIOR TO THE INITIATION OF RULE 143?

A I DON'T KNOW WHAT RULE THAT WAS, BUT I DON'T BELIEVE I WAS PRESENT AT ANY SUCH MEETING.

Q THEN YOU DID NOT HEAR THE TESTIMONY GIVEN BY VARIOUS QUALIFIED WITNESSES IN THE FIELD OF LAW ENFORCEMENT REGARDING THE NECESSITY FOR THE ENACTMENT OF THESE RULES?

MR. HERTZBERG: I'LL OBJECT TO THE USE OF THE WORD "QUALIFIED". I WAS PRESENT. I WOULD OBJECT TO THE USE OF THE WORD "QUALIFIED".

MS. JAFFE: I BELIEVE THEY WERE ACCEPTED AS BEING QUALIFIED, UNLESS YOU WANT TO DISQUALIFY CHIEFS OF POLICE AND OTHER SUCH PERSONS.

THE HEARING OFFICER: ARE YOU OBJECTING?

MR. HERTZBERG: I'M OBJECTING TO THE QUESTION ON THE GROUND THAT IT'S AMBIGUOUS.

MS. JAFFE: SUBMITTED.

THE WITNESS: I HAVE ALREADY SAID I WASN'T THERE.

MS. JAFFE: JUST A MOMENT HERE.

THE HEARING OFFICER: I DON'T KNOW WHAT TO RULE ON. THE ORIGINAL QUESTION AS TO QUALIFIED, WE MIGHT ASSUME THERE'S NO EVIDENCE THAT THEY WERE QUALIFIED. I THINK SHE COULD ASK THE PEOPLE WHO TESTIFIED. AT LEAST, IN THE OPINION, I ASSUME, OF THE PRESIDING HEARING OFFICER, THEY WERE QUALIFIED.

SO IF YOU WILL REPHRASE YOUR QUESTION, JUST AS A PERSON APPEARING BEFORE THE COMMITTEE, IN LIGHT OF HIS OBJECTION.

-- -- --

BY MS. JAFFE:

Q ALL RIGHT. WERE YOU PRESENT AT ANY TIME DURING THE TESTIMONY OF ANY PERSONS WHO GAVE EVIDENCE AT THE RULES HEARINGS PRIOR TO THE ENACTMENT OF RULE 143?

A IS THAT THE HEARING YOU'VE ALREADY REFERRED TO?

Q YES.

A I ALREADY SAID I WAS NOT THERE.

Q ALL RIGHT. THANK YOU.

HAVE YOU ANY EXPERIENCE RELATIVE TO VIOLATIONS OF CRIMINAL LAWS WHICH OCCUR ON OR ABOUT PREMISES LICENSED TO SELL ALCOHOLIC BEVERAGES WHICH HAVE NUDE PERFORMANCES?

MR. HERTZBERG: I OBJECT ON THE GROUNDS OF IRRELEVANCE.

MS. JAFFE: I SUBMIT IT GOES TO THE WEIGHT TO BE GIVEN THE WITNESS'S TESTIMONY.

MR. HERTZBERG: HER TESTIMONY HAS NOTHING TO DO WITH ANY RATIONALE BEHIND THE ENACTING OF RULE 143 AND WHY THEY WERE ENACTED.

SHE HAS TESTIFIED AS AN EXPERT IN THE FIELD OF DANCE.

MS. JAFFE: ALL RIGHT. I'M ATTEMPTING TO DRAW THE DISTINCTION BY THIS LINE OF QUESTIONING THAT THERE IS A DIFFERENCE BETWEEN SO-CALLED THEATER ARTS AND A TAVERN.

MR. HERTZBERG: DIFFERENCE BETWEEN THEATER ARTS AND A TAVERN?

MS. JAFFE: WELL, IF YOU DON'T UNDERSTAND MY STATEMENT, PLEASE SO INDICATE, AND I'LL ATTEMPT TO REPHRASE IT, MR. HERTZBERG.

MR. HERTZBERG: I WOULD ASSUME THERE IS A DIFFERENCE.

MS. JAFFE: OH, YOU ASSUME THERE IS A DIFFERENCE? FINE,

SO STIPULATED.

THE HEARING OFFICER: NOW, WHERE ARE WE?

MS. JAFFE: I FORGOT. I'M SORRY.

THE HEARING OFFICER: WELL, I BELIEVE YOU HAD AN OBJECTION BY RESPONDENT'S COUNSEL TO YOUR QUESTION REGARDING THE ACQUAINTANCE WITH THE PENAL ACTIVITIES OR PENAL VIOLATIONS GOING ON IN A BAR THAT --

MS. JAFFE: OFFERS NUDE ENTERTAINMENT.

THE HEARING OFFICER: -- OFFERS NUDE ENTERTAINMENT.

MS. JAFFE: YES.

THE HEARING OFFICER: I'LL OVERRULE THE OBJECTION. SHE CAN ANSWER IF SHE KNOWS.

THE WITNESS: I HAVE TO HAVE THE QUESTION REPEATED.

MS. JAFFE: ALL RIGHT. PERHAPS I CAN REPHRASE IT. IT MIGHT SAVE A LITTLE TIME HERE.

Q HAVE YOU HAD ANY EXPERIENCE RELATIVE TO VIOLATIONS OF THE CRIMINAL LAWS WHICH OCCURRED AT PREMISES LICENSED TO SELL ALCOHOLIC BEVERAGES WHICH OFFER NUDE PERFORMANCES?

MR. HERTZBERG: OBJECT ON THE GROUNDS IT ASSUMES A FACT NOT IN EVIDENCE.

THE HEARING OFFICER: OVERRULED. ANSWER IF SHE KNOWS.

THE WITNESS: I DON'T UNDERSTAND THE QUESTION AT ALL.

BY MS. JAFFE:

Q ALL RIGHT. HAVE YOU ANY EXPERIENCE WITH ANY INFRACTIONS OR MISCONDUCT OR VIOLATIONS OF THE LAWS IN BARS WHICH HAVE NUDE DANCING?

A WHAT I DON'T UNDERSTAND IS THE TERM "EXPERIENCE WITH

INFRACTIONS". I'VE READ SECTIONS OF THE PENAL CODE. I'M AWARE THAT HE HAS MADE VARIOUS INFRACTIONS. I DON'T UNDERSTAND.

Q ALL RIGHT. HAVE YOU EVER OBSERVED ANY MISCONDUCT IN BARS?

A OH, NO, NEVER.

Q ALL RIGHT. WOULD YOU DISTINGUISH BETWEEN THE TYPICAL AUDIENCE, IF THERE IS A DISTINCTION, AT A CLASSICAL BALLET PERFORMANCE AS OPPOSED TO A MODERN DANCE PERFORMANCE?

A MAY I CHOOSE MY THEATER? MAY I SAY THE AHMANSON THEATER AS OPPOSED -- WOULD YOU REPEAT THE QUESTION?

Q ALL RIGHT. I'LL WITHDRAW THE QUESTION.

HAVE YOU EVER BEEN AT BALLET PERFORMANCES AND SEEN THE AUDIENCE CONSUME ALCOHOLIC BEVERAGES WHILE WATCHING THE BALLET?

A WHILE WATCHING THE BALLET?

Q YES.

A ARE YOU REFERRING TO CLASSICAL BALLET? YOU WERE IN THE INITIAL QUESTIONING REFERRING ONLY TO CLASSICAL.

Q ALL RIGHT. AT THIS TIME, LET'S REFER TO CLASSICAL BALLET.

A NO, I'VE NEVER BEEN TO A CLASSICAL BALLET AT WHICH THE PERFORMERS -- THE AUDIENCE WAS DRINKING DURING THE PERFORMANCE, BUT LIQUOR IS SERVED AT THE HUNTINGTON HARTFORD AND AHMANSON DURING INTERMISSIONS, AT THE HUNTINGTON HARTFORD OR AHMANSON, ANY OF THE MAJOR THEATER BUILDINGS IN LOS ANGELES.

Q HAVE YOU EVER DANCED NUDE BEFORE A LIVE AUDIENCE?

A NO.

Q WOULD YOU DANCE NUDE -- STRIKE THAT.

A PLEASE.

THE HEARING OFFICER: LET HER ASK YOU THAT QUESTION.

BY MS. JAFFE:

Q DO YOU -- TO YOUR KNOWLEDGE, DO YOU KNOW IF NIGHT-CLUB PERFORMERS HAVE DIFFICULTIES WITH PATRONS WHO ARE UNDER THE INFLUENCE OF ALCOHOLIC BEVERAGES DURING THEIR PERFORMANCE?

A I'VE NEVER OBSERVED ANY SUCH DIFFICULTIES.

Q ALL RIGHT. ARE YOU AWARE THAT PERFORMERS DO HAVE DIFFICULTIES IN NIGHTCLUBS WITH AUDIENCES ON OCCASIONS?

MR. HERTZBERG: I OBJECT ON THE GROUNDS IT'S ASSUMING A FACT NOT IN EVIDENCE.

MS. JAFFE: I'M ASKING HER IF SHE'S AWARE OF IT.

MR. HERTZBERG: IT'S ASSUMING THAT IT'S TRUE, AND IT'S NOT IN EVIDENCE.

MS. JAFFE: I WITHDRAW THE QUESTION.

Q ALL RIGHT. HAVE YOU EVER OBSERVED OR HEARD OF A PERFORMER HAVING A PROBLEM WITH A PARTICULAR PATRON OR PATRONS IN HIS AUDIENCE?

MR. HERTZBERG: TO WHICH I OBJECT AS IRRELEVANT TO ANY ISSUE IN THIS CASE.

MS. JAFFE: I WILL ATTEMPT TO CONNECT IT UP.

THE HEARING OFFICER: THE ANSWER -- OBJECTION IS OVERRULED. ANSWER THE QUESTION.

THE WITNESS: WOULD YOU REPEAT THE QUESTION?

MS. JAFFE: WOULD YOU READ THE QUESTION BACK, PLEASE? I'M SORRY.

(THE QUESTION WAS READ BY THE REPORTER.)

THE WITNESS: NO.

BY MS. JAFFE:

Q HAVE YOU EVER SEEN OR HEARD OF A PERFORMER HAVING -- STRIKE THAT -- BEING HECKLED BY A MEMBER OF THE AUDIENCE?

A I'VE OBSERVED THAT IN THE -- IN ALL FORMS OF THEATER.

Q ALL RIGHT. HAVE YOU EVER OBSERVED A HECKLER THAT HAS GONE BEYOND JUST MERE VERBAL HARASSMENT OF A PERFORMER?

A NO.

Q WHEN YOU WERE IN THE BODY SHOP, DID YOU SEE ANY OF THE FEMALE DANCERS RUB THEIR HANDS OVER THEIR VAGINAS?

A NO.

Q WHEN YOU WERE IN THE BODY SHOP, DID YOU SEE ANY OF THE FEMALE DANCERS ARCH THEIR BODIES IN SUCH A MANNER AS TO EMPHASIZE AND EXPOSE THEIR VAGINAL AREAS?

A NO.

Q IF YOU HAD OBSERVED THOSE AFOREMENTIONED FACTS, WOULD YOU CHANGE YOUR OPINION IN ANY WAY RELATIVE TO THE ESTHETIC AND COMMUNICATIVE VALUE OF THE PERFORMANCES YOU OBSERVED AT THE BODY SHOP?

MR. HERTZBERG: I OBJECT ON THE GROUNDS IT'S NOT A PROPER HYPOTHETICAL QUESTION AND DOESN'T STATE ALL THE FACTS.

MS. JAFFE: I THINK IT'S A PROPER HYPOTHETICAL QUESTION.

MR. HERTZBERG: ASSUMES FACTS NOT IN EVIDENCE, AND IT CALLS FOR A CONCLUSION.

MS. JAFFE: ALL RIGHT. IT DOES NOT ASSUME FACTS NOT IN EVIDENCE AS TO --

THE HEARING OFFICER: OBJECTION OVERRULED. ANSWER THE

QUESTION.

THE WITNESS: LET'S HAVE THE QUESTION AGAIN.

MS. JAFFE: ALL RIGHT. PERHAPS I CAN REPEAT THE QUESTION AND SAVE A LITTLE TIME.

Q ALL RIGHT. IF YOU HAD OBSERVED FEMALE DANCERS IN THE BODY SHOP ARCHING THEIR BODIES IN SUCH A MANNER AS TO EXPOSE AND EMPHASIZE THEIR VAGINAS AND RUBBING THEIR HANDS OVER THEIR VAGINAS, WOULD YOUR OPINION CHANGE IN ANY WAY AS TO THE COMMUNICATIVE AND ESTHETIC VALUE OF THE DANCING YOU OBSERVED AT THE BODY SHOP?

MR. HERTZBERG: WELL, THAT'S COMPOUND. I WILL OBJECT ON THOSE GROUNDS.

MS. JAFFE: I BELIEVE YOU CAN ASK AN EXPERT COMPOUND QUESTIONS.

THE HEARING OFFICER: ANSWER THE QUESTION. OVERRULED.

THE WITNESS: I DON'T BELIEVE AT ANY TIME THAT I GAVE ANY PERSONAL OPINION AS TO THE VALUE OR DEGREE OF TASTE OF THE PERFORMANCE AT THE BODY SHOP. ONE OF THE PHOTOGRAPHS I SUBMITTED IS A PERFORMER WITH HER VAGINA EXPOSED. I DON'T REALLY KNOW WHAT YOU ARE ASKING.

BY MS. JAFFE:

Q ALL RIGHT. LET ME TRY AGAIN. IF YOU HAD OBSERVED THE DANCERS IN THE BODY SHOP RUBBING THEIR HANDS OVER THEIR VAGINAS, WOULD YOUR OPINION CHANGE IN ANY WAY AS TO THE ESTHETIC AND COMMUNICATIVE VALUES OF THE DANCING YOU OBSERVED IN THE BODY SHOP?

A I CAN'T ANSWER THAT AS A HYPOTHESIS.

Q FINE. THANK YOU. WELL, ASSUMING THAT IT DID HAPPEN, I'M ASKING YOU TO ASSUME.

A I'M TELLING YOU, UNLESS I WAS THERE TO EXPERIENCE THE DEGREE AND QUALITY OF COMMUNICATION AT THAT MOMENT, I CAN'T ANSWER THAT.

Q ALL RIGHT. DO YOU HAVE ANY OPINION AS TO WHETHER OR NOT A DANCER RUBBING THEIR VAGINA WOULD AFFECT THE ESTHETIC VALUE OF THE PERFORMANCE?

A IN -- IF I WERE A MEMBER OF THE AUDIENCE?

Q AS TO YOUR PERSONAL OBSERVATION.

A I FIND IT VERY DIFFICULT TO RESPOND TO A HYPOTHETICAL SITUATION THAT INVOLVES VERY MUCH THE COMMUNICATION BETWEEN A PERFORMER AND ME AND THE AUDIENCE WHEN I'M NOT THERE AND THE PERFORMER IS NOT THERE.

Q CAN YOU IMAGINE SUCH A SITUATION IN YOUR MIND'S EYE?

A YES, I CAN.

Q WOULD THAT SITUATION CHANGE YOUR OPINION IN ANY WAY RELATIVE TO THE ESTHETIC VALUE OF THE PERFORMANCE?

A I DIDN'T MAKE AN ESTHETIC JUDGMENT ABOUT THE PERFORMANCE.

Q ALL RIGHT. THEN YOU DID NOT TESTIFY THERE WAS ESTHETIC VALUE TO THE PERFORMANCES YOU OBSERVED IN THE BODY SHOP?

A I TESTIFIED THAT WATCHING A DANCER DANCE IS AN ESTHETIC EXPERIENCE. NOW, I DON'T KNOW IF WATCHING A PERSON RUBBING HER VAGINA IS AN ESTHETIC EXPERIENCE.

Q ALL RIGHT. THANK YOU VERY MUCH.

DO YOU KNOW WHETHER OR NOT WATCHING A PERFORMER WHO

ARCHES HER BODY IN SUCH A WAY AS TO EXPOSE OR EMPHASIZE HER VAGINA WOULD BE AN ESTHETIC EXPERIENCE?

A ARE YOU SAYING THAT THAT'S THE PURPOSE OF THE ARCHING OF THE BACK, OR IS IT AN ACCIDENTAL EXPOSURE OF THE VAGINA?

Q WELL, EITHER ONE, AND I'M RESPONDING TO YOUR QUESTION.

A MY ANSWER COULD ONLY BE THAT IF I OBSERVED A DANCER IN THE COURSE OF THE DANCE MOVE HER LEGS IN SUCH A WAY THAT I GOT A GLIMPSE OF HER VAGINA, I WOULD NOT BE PERSONALLY OFFENDED BY THAT.

Q LET'S ASSUME FOR A MOMENT THAT THE DANCER DELIBERATELY ARCHES HER BODY TO EXPOSE AND EMPHASIZE HER VAGINA. WOULD THAT AFFECT YOUR DETERMINATION OF THE ESTHETIC AND COMMUNICATIVE VALUE OF THE PERFORMANCE?

A HOW WOULD I KNOW SHE WAS DOING IT DELIBERATELY?

Q ALL RIGHT. ASSUMING SHE WAS.

A I CAN'T ANSWER THAT. WE'RE TALKING ABOUT WHAT'S IN THE INTENTION OF THE ARTIST.

Q SO YOU ARE BASING YOUR ENTIRE TESTIMONY RELATIVE TO THE COMMUNICATIVE VALUE AND ESTHETIC VALUE OF THE PERFORMANCES YOU OBSERVED IN THE BODY SHOP BASED UPON WHAT YOU PERSONALLY OBSERVED THERE?

A ABSOLUTELY, YES.

Q WERE YOU BASING IT BASED UPON OBSERVATIONS IN OTHER -- STRIKE THAT.

I WILL WITHDRAW THAT QUESTION.

DO YOU FEEL THERE IS ANY PARTICULAR COMMUNICATION

THAT IS MADE BY THE EXPOSURE OF PUBIC HAIRS?

A NO MORE THAN, AS I ALREADY SAID, THAN BY THE EXPOSURE OF ANY OTHER PART OF THE BODY, INCLUDING THE FACE.

MS. JAFFE: ALL RIGHT. THANK YOU. I HAVE NOTHING FURTHER.

MR. HERTZBERG: NOTHING FURTHER.

THE HEARING OFFICER: YOU HAVE NO FURTHER QUESTIONS?

MR. HERTZBERG: NO.

THE HEARING OFFICER: I HAVE ONE QUESTION.

YOU TESTIFIED REGARDING THE ARTICLES IN THE ONE PICTURE -- RATHER, ARTICLES IN 1-B. HOW MANY OF THOSE HAVE YOU ACTUALLY SEEN?

THE WITNESS: OF THE PERFORMANCES I DISCUSSED OR THE PERFORMANCES PICTURED?

THE HEARING OFFICER: PERFORMANCES PICTURED.

THE WITNESS: I'VE SEEN PORTIONS OF "OH, CALCUTTA" ON TELEVISION AND PORTIONS OF ERICK HAWKINS. I'LL HAVE TO LOOK TO REMEMBER WHAT THE OTHERS WERE.

I'VE SEEN THE JOFFREY -- I'VE SEEN THE JOFFREY BALLET. (REFERS TO PICTURES.)

I'VE SEEN THE JOFFREY BALLET, AND I'VE SEEN ERICK HAWKINS, AND PORTIONS OF "OH, CALCUTTA" AND "HAIR", AND THAT'S IT.

THE HEARING OFFICER: OKAY. ANY FURTHER QUESTIONS?

MS. JAFFE: NO FURTHER QUESTIONS. I HAVE A MOTION, THOUGH.

THE HEARING OFFICER: ALL RIGHT.

MR. HERTZBERG: NO FURTHER QUESTIONS.

THE HEARING OFFICER: YOUR MOTION?

MS. JAFFE: I'M RENEWING MY MOTION TO STRIKE THE TESTIMONY ON THE SAME GROUNDS AS I PREVIOUSLY MENTIONED IN PREVIOUS ARGUMENT ON THE RECORD.

THE HEARING OFFICER: I RESERVED RULING ON THE MOTION.

MR. HERTZBERG: WE'VE GOT A LOT MORE TESTIMONY.

MS. JAFFE: ALL RIGHT. I WANTED TO PRESERVE MY RECORD.

THE HEARING OFFICER: THERE ARE SEVERAL GROUNDS AND SEVERAL ACTS AND SEVERAL MOTIONS. ONE WAS THE LACK OF FOUNDATION, WHICH HE EXPECTS TO TIE UP, AND ONE IS ALSO -- WE HAVE TO TIE IT UP, AND THE RULINGS BASED UPON LA RUE. SO --

MS. JAFFE: I WANTED TO MAKE SURE MY RECORD WAS PRESERVED, AND -- BY MAKING THE OBJECTION IMMEDIATELY AFTER THE TESTIMONY OF THE WITNESS.

THE HEARING OFFICER: RULING WILL BE THAT YOUR MOTION BE TAKEN UNDER ADVISEMENT AND RULING RESERVED.

---0---

STATE OF CALIFORNIA)
: ss.
COUNTY OF SAN DIEGO)

I, B. LOIS HUGHES

a Notary Public in and for the County of San Diego, State of California, do hereby certify:

That the foregoing proceedings before the Office of Administrative Hearings were reported by me stenographically and later transcribed into typewriting under my direction, and the foregoing 192 pages contain a full, true and correct transcript of the testimony offered or taken and of the evidence offered or received and all rulings, acts and statements by the Hearing Officer; also, all objections or exceptions thereto and all matters to which the same relate made during the progress of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 23RD day of OCTOBER 1975

B. Lois Hughes

B. LOIS HUGHES, CSR # 3031
Notary Public

OFFICIAL SEAL
B. LOIS HUGHES
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Expires Dec. 27, 1977

BEST COPY AVAILABLE

Supreme Court, U. S.
FILED
AUG 27 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

77-304 Term, 1977

No. _____

Paul Richter, dba The Body Shop,

Petitioners,

vs.

Baxter Rice, Director of The Department of Alcoholic Beverage Control of the State of California, The Department of Alcoholic Beverage Control of the State of California, and The Alcoholic Beverage Control Appeals Board of the State of California,

Respondents.

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD OF THE STATE OF CALIFORNIA

Joshua Kaplan, A Member of
Hertzberg, Kaplan & Koslow

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of Counsel

SUBJECT INDEX

APPENDIX "A" .... Opinion of the Alcoholic Beverage Control Appeals Board

IN THE

SUPREME COURT OF THE UNITED STATES

_____ Term, 1977

No. _____

Paul Richter, dba The Body Shop,

Petitioners,

vs.

Baxter Rice, Director of The Department of Alcoholic Beverage Control of the State of California, The Department of Alcoholic Beverage Control of the State of California, and The Alcoholic Beverage Control Appeals Board of the State of California,

Respondents.

SUPPLEMENTAL APPENDIX TO
PETITION FOR WRIT OF CERTIORARI TO THE
ALCOHOLIC BEVERAGE CONTROL APPEALS
BOARD OF THE STATE OF CALIFORNIA

Pursuant to the request of the Court, Petitioner herewith submits a revised Appendix "A" in compliance with Supreme Court Rule 39.

BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

OF THE STATE OF CALIFORNIA

In the Matter of the Accusation Against	AB-4350 File 24157; Reg. 5216 ALJ: Gruen
PAUL A. RICHTER dba The Body Shop 3776 Riley Street San Diego	Date and Place of Hearing: January 26, 1977 314 West First Street Los Angeles, California
Respondent and Licensee	
On-sale general license	For Department: Honorable Evelle J.
Under the Alcoholic Beverage Control Act.	Younger, Attorney General, Marilyn Mayer Deputy Attorney General
	For Appellant: Joshua Kaplan, Esq.

Appellant Paul A. Richter, doing business as The Body Shop, has appealed a decision of the Department of Alcoholic Beverage Control which determined:

> "1. The Department's motion to dismiss Counts II, III, IV and VI of the Accusation and to amend licensee's previous record to show 'finality' of decision relative to Accusation 43, 4-10-74 and Accusation 18386, 7-30-73, should be granted.
>
> "2. Exhibit A (reporter's partial transcript in file 32772; Reg. 43) is admitted into evidence.

> "3. Article XX, Section 22 of the California Constitution and Sections 24200(a) and (b) of the Business and Professions Code are not unconstitutional and there is no violation found of the First and Fourteenth Amendments to the United States Constitution.
>
> "4. Section 143.3(1)(c), California Administrative Code was not unconstitutionally found above, and there is no violation found of the First and Fourteenth Amendments to the United States Constitution.
>
> "5. It was not established that there existed conspiratorial motives or bad faith on the part of enforcement officials whereby respondent and others similarly situated were subjected to selective and arbitrary enforcement of the law.
>
> "6. Respondent violated Section 143.3(1)(c), California Administrative Code as to Counts I through IV of the findings of fact above. Grounds for disciplinary action against respondent's license have been established pursuant to Sections 24200(a) and (b) of the Business and Professions Code and Article XX, Section 22 of the California Constitution."

As a penalty the department revoked respondent's license as to each of Counts I through IV of the decision.

The department's decision further provides:

> "A. Ruling on Notice of Special Defense: All of the special defenses and any motion contained therein, are

each overruled and denied.

"B. Pursuant to stipulation the matter was head in Los Angeles, California.

"C. The Department moved to dismiss Counts II, III, IV and 71 of the Accusation, and moved to amend licensee's previous record to show the decision was final relative to Accusation 43, 4-10-74 and Accusation 18386, 7-30-73.

"D. The matter was submitted subject to the right of the parties to submit briefs and points and authorities. Respondent's briefs and points and authorities were filed on July 14, 1976. The Department filed its brief and points and authorities on July 30, 1976.

"Pursuant to stipulation of the parties, the Administrative Law Judge makes the findings of fact, as follows:

"FINDINGS OF FACT:

"COUNT I

"On or about October 9, 1975, the above-named on-sale licensee did permit Denise LaMont to perform acts in the above-designated on-sale licensed premises at which time said Denise LaMont did display her pubic hair.

"COUNT II

"On or about November 8, 1975, the above-named on-sale licensee did permit Donna Diane Millard and Linda Sue Spring to perform acts in the above-designated on-sale licensed premises at which time

said Donna Diane Millard and Linda Sue Spring did display their pubic hair.

"COUNT III

"On or about November 21, 1975, the above-named on-sale licensee did permit females known only as Felicia and Donna to perform acts in the above-designated on-sale licensed premises at which time said females known only as Felicia and Donna did display their pubic hair.

"COUNT IV

"On or about March 16, 1976, the above-named on-sale licensee did permit Sherry Duke and Ruth Rae Bridwell to perform acts in the above-designated on-sale licensed premises at which time said Sherry Duke and Ruth Rae Bridwell did display their pubic hair.

"SPECIAL FINDINGS:

"It was stipulated by the parties that the reporter's partial transcript be identified and received in evidence as Exhibit A and that testimony contained therein be received as if the witness were called, sworn and testified at the herein hearing subject to the same objections of record contained in said Exhibit A.

"LICENSEE PREVIOUS RECORD:

"Paul A. Richter type '48' licensed as individual at above premises since 11-17-75 with no disciplinary action.

"Paul A. Richter, President and sole stockholder of Paul Richter &

Associates, Inc., type '48' licensed at above premises from 1-31-68 to 11-17-75 with the following:

"Accusation 43, 4-10-74, Rule 143.3 (1)(c) - 11 counts, Rule 143.3(1)(b) & (c) 1 count, & Rule 143.3(2) - 1 count, Decision: 45 days/fifteen stayed, Appeals decided adverse to respondent. Decision final.

"Accusation 18981, 11-12-73, Rule 143.3(1)(c) - 22 counts, Rule 143.2(1) - 1 count, Rule 143.3(2) - 2 counts, and Rule 143.3(2) -- 12 counts, Decision of 11-28-75: 30 days/ 10 stayed; appealed, pending.

"Accusation 18386, 7-30-73, Rule 143.3(1)(c) - 20 counts, Rule 143.3(2) - 1 count, Decision of 3-21-74, thirty days/ ten stayed, Appealed, 3-4-76 (sic). All appeals resolved adverse to respondent. Decision final.

"Accusation 7562, 2-21-69, 24200 a B & P Sec. 22, Art. XX, State Constitution; 11-17-71 ten days/five stayed (imposition of penalty stayed pending U.S. Supreme Court Decision in the LaRue case); POIC ($771.63) Accepted on 8-6-73 in lieu of ten days/five stayed.

"Accusation 11791, 11-24-70, 2568a & b & 25665, 3-1-71 fifteen days/ten stayed, eff. 6-24-71 (posted).

"Accusation 12043, 1-8-71, 25665 & 25663: 4-1-71 twenty-five days/ fifteen stayed, POIC ($1,108.60) accepted in lieu on 6-17-71.

"Paul A. Richter type '0' licensed at above premises as individual from 2-14-66 to 3-17-67; type '48' licensed at above premises as individual from 2-16-67 to 1-31-68, with the following:

"Type '48' licensed:

"Accusation 3415, 4-20-67, 25658 a & b & 25665; 4-20-67 five days, POIC ($250) in lieu on 6-2-67.

"Accusation 4001, 1-27-67, 25658 a & b & 25665, 8-24-67 fifteen days/ ten stayed, POIC accepted on 11-17-67 (five days); and reimposition of ten days stayed for POIC $1,543.26) accepted on 8-6-73.

"Accusation 4947, 12-26-67, 25632, 6-8-70, ten days, POIC ($1,408.80) accepted on 7-8-70."

Appellant appeals under Business and Professions Code section 23084, subsections (a), (b), (c) and (d).

The department dismissed Counts II, III, IV and VI of the accusation at the hearing. The Attorneys for the department and respondent stipulated as to the truth of Counts I, V, VII and VIII of the accusation (Counts I, II, III and IV of the department's decision). They also stipulated that a partial transcript of the testimony of one Virginia Chase, In Case No. L-6576, be

received into evidence as if Ms. Chase had testified at the instant hearing (Respondent's Exhibit A), with the objections thereto also in full force and effect, to be ruled upon by the Administrative Law Judge presiding over the instant department hearing regardless of prior rulings. Ms. Chase had testified as an expert witness with regard to the definition of a "dance" and related matters in the previous department hearing.

Appellant filed a petition with the appeals board to suspend this proceeding before the appeals board pending the outcome of a hearing scheduled by the department relative to whether section 143.3 of the California Administrative Code,[1]

1/ Section 143.3 states in pertinent part: "Acts or conduct on licensed premises in violation of this rule are deemed contrary to public welfare and morals, and therefore no on-sale license shall be held at any premises where such conduct or acts are permitted.

"Live entertainment is permitted on any licenzed premises, except that:

"(1) No licensee shall permit any person to perform acts of or acts which simulate:"

* * *

"(c) The displaying of the pubic hair, anus, vulva or genitals."

should be repealed or amended, and pending an action filed by the appellant in the United States Ninth Circuit Court of Appeals, entitled Richter v. The Dept. of Alcoholic Bev. Control. (Case No. 76-2422).

With regard to the stay requested by appellant due to the aforementioned hearing by the department, we find said request devoid of merit. There is no evidence in the record that a repeal of section 143.3 is pending nor imminent. Moreover, repeal of said rule would not necessarily affect violations occurring prior thereto.

With regard to appellant's request for a stay of these proceedings due to his appeal to the United States District Court of Appeal for the Ninth Circuit, supra, Business and Professions Code section 23084(e) and Article XX, section 22 of the California Constitution, cited by appellant, permit a remand (not a suspension) only and this is only when relevant evidence could not have been produced, or was excluded, at the department hearing. Appellant has shown no relevant evidence

which was not considered by the department. The appeals board is not aware of any legal authority to suspend a proceeding before it on appeal. A matter is stayed by law while being considered by this board and during the time that an application may be made for a Writ of Review to the appellate courts (Business and Professions Code section 23090.7); hence, granting such a stay would be a redundant act. Finally, in People v. Green, 66 Cal.App.3d 801, the court stated:

> California courts also have recognized that a federal district court cannot impose a duty to act upon any state court and that a state court acts independently and voluntarily in responding to the federal order. (See People v. Pasanella (1971) 14 Cal.App.3d 1004 [92 Cal.Rptr. 655]; People v. Hamilton (1975) 80 Cal.App.3d 476 [123 Cal.Rptr. 390])" (People v. Green, 66 Cal.App.3d 801, at p. 804.

Upon appeal appellant contends: the enforcement of section 143.3 against him would amount to a deprivation of rights guaranteed under the First and Fourteenth amendments to the Constitution of the United States in at least three respects: (1) that section 143.3 cannot, consistent with the

guarantees of the First Amendment, apply to forbid dance performances in a neighborhood theater absent gross sexuality on the facts of the particular application, (2) that it is inconsistent with the due process guarantee of the Fourteenth Amendment read in light of the First Amendment context in this action, for the determination of gross sexuality to be made by any other than a judicial tribunal in the first instance, and (3) that the procedure herein, by not guaranteeing applicant judicial review of the department's decision as a matter of right, fails to afford appellant minimum due process, and violates Article XX, section 22 of the Constitution of the State of California; and, appellant further submits that the drastic remedy herein sought, revocation of his license, is so excessive and abusive in relation to the conduct at issue to be beyond the department's administrative discretion.

Appellant's contention that since gross sexuality was not proven as to the dance performances, section 143.3 constitutes a violation

of the First Amendment as applied to the specific violations herein, is devoid of merit. The violations stipulated to specifically indicate the licensee of the subject premises simply permitted individual females to display their pubic hair. The testimony in Respondent's Exhibit A did not pertain to the acts on the dates in question. However, assuming arguendo the exposures herein in some manner partook of communication, we find appellant's "gross sexuality" argument to be unpersuasive in view of the reaffirmation of the simple nudity test of California v. LaRue, (1972), 409 U.S. 109 [93 S. Ct. 390], In Doran v. Salem Inn, Inc., (1975) 95 S.Ct. 2561. In Doran the United States Supreme Court stated:

> "Although the customary 'bar room' type of nude dancing may involve only the barest minimum of protected expression, we recognized in California v. La Rue, 409 U.S. 109, 118, 93 S.Ct. 309, 397, 34 L.Ed.2d 342 (1972), that this form of entertainment might be entitled to First and Fourteenth Amendment protection under some circumstances. In La Rue, however, we concluded that the broad powers of the states to regulate the sale of liquor, conferred by the Twenty-First Amendment, outweighed any First Amendment interest in nude dancing and that a state could therefore ban such dancing as part of its liquor license program."
> (Emphasis ours, p.2568.)

(The Doran Court went on to conclude, that the statute being considered therein was unconstitutional because it went beyond licensed premises in its application.)

Appellant's contention that the instant procedure amounts to an unconstitutional prior restraint on appellant's constitutional right of free expression under the First and Fourteenth Amendments, is devoid of merit (California v. LaRue, supra, 409 U.S. 109 [93 S.Ct. 390] and Doran v. Salem Inn, Inc., supra, 95 S.Ct. 2561). There was no injunction applied by the department prior to its hearing regarding the instant accusation under section 143.3, a fortiori, the licensee was and is allowed to proceed with his alleged communicative acts without any prior restraint thereon. Moreover, as heretofore indicated, the department is not allowed to enforce its decision during the pendency of an appeal with the Alcoholic Beverage Control Appeals Board and during the time

appellant may file a Writ of Review with the District Court of Appeal or Supreme Court after the Appeals Board's decision (Business and Professions Code section 23090.7). Clark v. The City of Fremont, Nebraska, 377 F.Sup. 327, is not applicable because it misinterprets the decision of LaRue to mean that a finding upon gross sexuality is required in licensed premises. As stated in Doran v. Salem Inn, Inc., supra, gross sexuality is not the test that is required in LaRue; mere nudity in a licensed premises is sufficient.

Appellant's contention that the instant procedure fails to afford him a meaningful opportunity to be heard and denied him due process of law, is devoid of merit. This is not a situation as the court was faced with in Misurelli v. City of Racine, 346 F.Sup. 43, where the liquor license might expire prior to a final determination of the denial of the liquor license's renewal; and, that the only grounds for reversal of the liquor license denial would be if the municipality decision had been found to be arbitrary, capricious or discriminatory. Under Business and Professions Code

section 23090.2, a court on review (as did this board) may consider whether: the department has proceeded without or in excess of its jurisdiction; the department has proceeded in the manner required by law; the decision of the department is supported by the findings; the findings in the department's decision are supported by substantial evidence in the light of the whole record; and, there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before the department. Moreover, any person affected by a final order of the appeals board, may, under Business and Professions Code section 23090, apply to the Court of Appeal or the Supreme Court for a Writ of review of said final order within thirty days after the filing of said final order. Under Business and Professions Code section 23090.7, no decision of the department which has been appealed to the board and no final order of the board shall become effective during the period in which a petition may be made for such aWrit of Review;

and, under Business and Professions Code section 23090.6, the court before which the Petition for Writ of Review is filed may stay or suspend, in whole or in part, the operation of the order, rule, or decision of the department.

Appellant's contention that Article XX, section 22 of the California Constitution has been violated by a change in the law which removes the right for judicial review of appeals board decisions in all cases, is devoid of merit. The subject Constitutional provision states: "Orders of the board shall be subject to judicial review upon petition of the director or any party aggrieved by such order." (emphasis added.) It does not state: "Orders shall be reviewed." Since the appellant has the ability to appeal the board's decision to the courts of appeal of the State of California under Business and Professions Code section 23090, with the concomitant right to have the decision stayed upon said appeal, the provision in Article XX, section 22 has been appropriately provided for by statutory law.

(Also see: Francisco Enterprises, Inc., v. Kirby, 482 F.2d 481, which concludes that the department is a state court of limited jurisdiction.)

Appellant's contention that the penalty of revocation lies beyond the legal boundaries of the department's regulatory discretion under these facts, is devoid of merit. Many of the previous violations of appellant have become final. Walsh v. Kirby, 13 Cal.3d 95, cited by appellant, indicates that in a fair trade matter the department must serve an accusation on a licensee prior to the date of a subsequent violation, in order to be permitted to file a subsequent accusation based upon said subsequent violation; no final decision is required before the subsequent accusation can be filed, however. Walsh does not concern situations, such as this, involving an habitual violator. The department is given broad discretion as to the imposition of a penalty (Cadilla v. Bd. of Medical Examiners, 26 Cal.App.3d 961; Lake v. Civil Service Commission, 47 Cal.App.3d 224). Since the record demonstrates appellant is an habitual offender as to the rule involved and unwilling to conform

(Dave's Market, Inc. v. Dept. of Alcoholic Bev. Control, 222 Cal.App.2d 671 [35 Cal. Rptr. 348]), we cannot say imposition of the penalty of revocation in this case constitutes an abuse of discretion as a matter of law. (See Martin v. Alcoholic Bev. Control Appeals Bd. & Haley, 52 Cal.2d 287 [341 P.2d 296].) As discussed, supra, this decision of the department, is "subject to" judicial review.

There is no merit to the issues raised upon appeal. The evidence supports the findings, and the findings support the department's decision, which is affirmed.

PETER M. FINNEGAN, CHAIRMAN
ALCOHOLIC BEVERAGE CONTROL
APPEALS BOARD

We Concur:
Patricia Wilkey
Eugene V. Lipp

AFFIDAVIT

STATE OF CALIFORNIA)
)ss.
COUNTY OF LOS ANGELES)

I, ANDREA F. JACKSON, depose and say:

That I re-typed the Opinion of the Alcoholic Beverage Control Appeals Board, which is attached hereto as Appendix "A." to the Petition for Writ of Certiorari, from a true and correct copy thereof; that I certify that this is a true and accurate reproduction of said Opinion.

ANDREA F. JACKSON

Subscribed and sworn to before me

this 25th day of August, 1977.

Notary Public in and for Said County
and State

OFFICIAL SEAL
JANICE A. DAGGETT
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Oct. 31 1977

PROOF OF SERVICE BY MAIL

(1013, 1013a C.C.P. (2), 2015.5 (C.C.P.))

STATE OF CALIFORNIA)
)ss.
COUNTY OF LOS ANGELES)

AFFIDAVIT OF SERVICE BY

MAIL BY ATTORNEY

I, JOSHUA KAPLAN, being first duly sworn, say:

That I am and was at all times herein mentioned, a citizen of the United States, employed in the County aforesaid, and over the age of eighteen years; I further say that I am an active member of the State Bar of California, a member of Hertzberg, Kaplan & Koslow, attorneys of record in this case, and am not a party thereto.

My business address is 3550 Wilshire Boulevard, Suite 1418, Los Angeles, California 90010.

That on August 25, 1977, I served the within SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD OF THE STATE OF CALIFORNIA on the interested parties in said action by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid, in the United States mail at 3550 Wilshire Boulevard, Los Angeles, California 90010 addressed as follows:

Attorney General Evelle J. Younger
Mel Segal, Deputy Attorney General
110 West "A" Street, Suite 600
San Diego, California 92101

State Supreme Court
3580 Wilshire Boulevard
Los Angeles, California 90010

Court of Appeal,
Fourth Appellate District
6010 State Building
1350 Front Street
San Diego, California 92101

JOSHUA KAPLAN

Subscribed and sworn to before me this 25th day of August, 1977.

Notary Public in and for said County and State

OFFICIAL SEAL
JANICE A. DAGGETT
NOTARY PUBLIC-CALIFORNIA
LOS ANGELES COUNTY
My Commission Expires Oct. 31, 1977